(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1996

ELIZABETH GORDON,

Petitioner,

v.

BOARD OF EDUCATION FOR THE CITY OF NEW YORK

Defendant

On Petition For Writ Of Certiorari
To The (UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT)

PETITION FOR WRIT OF CERTIORARI

"s/Elizabeth Gordon".
ELIZABETH GORDON, *Pro Se*
159-26 HARLEM RIVER DRIVE APT 10H
NEW YORK, NEW YORK 10039
(212) 491-6392

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125 pp

TABLE OF CONTENTS

Page

Questions Presented for Review ..... (i-v)

Parties to the Proceedings ..... (vi)

Petition ..... 1 - 12

Exhibit 1 ..... 13 - 24

Questions Presented for Review
- Exhibit 1
- Legal Draft 7/13/90
- Defendant's Exhibit W
- Defendant's Exhibit T
- Résumé "Old"
- Résumé "New"
- Credentials

Appendix For Petitioner-Pro Se
Summary Order—March 18, 1997
Order: Dated July 8, 1996
Judgment: Dated July 10, 1996 Filed July 12, 1996
Order: Dated August 5, 1996
Notice of Probable Cause Determination
Complaint: NYCCOHR
Amended Complaint: NYCCOHR
Notice of Motion for Reconsideration: Dated 7/22/96
Affidavit/Affirmation
Brief for Motion for Reconsideration
Response from Corporation Counsel: Dated 10/18/93
Amended (answer) Response From Same: Dated 10/24/94
Pre-Trial Order: Dated June 21, 1996
Plaintiff's Proposed Findings of Fact and Conclusions of Law
Defendant's Proposed Findings of Fact and Conclusions of Law
Facsimile Cover Sheet: Inclusion for the Joint-Pretrial Order
-Eugene Bogan, Esq.

Notice of Appeal: Dated July 22, 1996
Receipt of Notice of Appeal: Dated August 19,1996
Civil Appeals Scheduling Order #1: Field September 1, 1996
General Docked for Second Circuit Court of Appeals
Filed 8/16/96 (9/11/96; 10/3/96; 01/9/970
Original Receipt for Appeal: Dated 08/16/96
Notice of Motion for Leave to File Supplemental Exhibits
Affidavit/Affirmation
Notice of Motion for request for reconsideration to
Strike Document from the record
Petition for Suggestion for Rehearing In Banc
Affidavit/Affirmation
Summary Order - March 18, 1997
Letter to Dr. Lavender from Barbara A. Gambino
Dated June 5, 1987 Supervisor, Special Education
Letter to Ms. Gordon from Elsie Bielicki, Special Education
Supervisor
New York Newsday Article: Dated Friday, April 21, 1989
Verified Complaint: NYCCOHR Dated March 27, 1996

QUESTIONS PRESENTED FOR PREVIEW

During my two day bench trial in the U.S. District Court June 26-27, 1996, there appears to have been irregularities which went unchecked. My constitutional rights guaranteed under the 14th Amendment to the Constitution of the United States of America were violated. I did not receive the equal protection under the laws. One hundred percent of the Defendant's testimony was unsubstantiated hearsay.

Question:

1. Did the Court exercise too much Judicial discretion in allowing into the record the extent of unsubstantiated "Hearsay" that was admitted, and then based Its decision on it?
   Ninety-nine and nine-tenths percent of the Defendant's evidence presented against me was generated nine (9) years after the fact.

Question:

2. Should the Court have allowed that evidence into the record, and then based Its decision to find me incompetent as an Administrator on it, fair?
3. How does the issue of relevancy apply?

The Defendant characterized me professionally as a "sub-par special education teacher". The Court, appearing to piggy-back on that, characterized me professionally "as average at best".

Question:

4. Was the Court's decision to rephrase the Defendant's characterization of me professionally a reversible error?

During my twenty year career as an Educator, due to uncontrollable circumstances, I was late eleven (11) minutes. The Defendant characterized my attendance as unprofessional and excessive. Again, the Court piggy-backed on the Defendant's characterization of me professionally, and stated that my eleven minutes lateness were "excessive tardiness".

5. Was the Court reasonable in Its decision to characterized my attendance as "excessive tardiness", rephrasing the Defendant's description of me professionally?

Anthony Alvarado, the person responsible for making the decision about who would be hired as Educational Directors, had to resign as Chancellor of the New York City Board of Education in 1984 amid allegations of corruption and other charges of misconduct. In a 1989 newspaper article, similar charges were alleged against Anthony Alvarado.

Question:

6. Did the Court make a reversible error when It denied my attorney the opportunity to question Mr. Alvarado per the newspaper article which appeared in New York Newsday, about why he resigned in order to attack his credibility?

Question:

7. Should undocumented testimony by a hostile witness alleged to have harassed me, and conspired against me been allowed into the record?

Question:

8. How much credence, if any, should the Court have given to the testimony of a witness alleged to have harassed me, and taken part in a conspiracy against me?

Documents submitted as evidence against me were tampered with. These were official school records.

Question:

9. What was the Judicial responsibility relative to these documents once it was brought to the attention of the Court?

All of the selectees were deemed to have superior administrative qualifications to mine. One of the selectee's administrative qualifications consisted of experience gained solely in a non-academic setting known as extra-curricular activities. On the other hand, my administrative qualifications consisted of a six-year Professional Certification in Educational Administration and Supervision, a one year internship in the same field, New York State Certifications in the same field, a license Assistant Principal, as well as similar experience in extra-curricular activities.

Question:

10. Whose qualifications are superior?

My attorney was clearly ineffective. This was evidenced by his failure to challenge any of the documents submitted as evidence against me, and the extent of unsubstantiated "Hearsay".

Question:

11. What impact did my attorney's ineffectiveness have on the outcome of the decision in my cause?
12. Was there a Judicial responsibility relative to the ineffectiveness of my attorney?
13. Are there any legal grounds for evidence generated out of a conspiracy after the fact to be used as part of the decision making process?

Anthony Alvarado, one of the primary witnesses, gave contradictory testimony.

Question:

14. What credence should the Court have given to his testimony?

15. Should his testimony have remained in the record?

Question:

16. What was the Judicial responsibility relative to unofficial documents having been submitted in violation of the U.F.T. contract once this fact was brought to the Court's attention?

Facts and information were intentionally misrepresented.

Question:

17. What was the responsibility of the Court once this fact was brought to Its attention?

Question:

18. Did the Court remain impartial in Its ruling in my case?

19. Should the testimony of a perjurer remain in the record once it is brought to the attention of the Court?

Two of the selectees were serving in the position before the posting for the positions were posted. They remained in the positions after in posting. Two more of the selectees were hired in violation of the U.F.T. contract. The U.F.T. contract was not re-written to accommodate these irregularities; nor were there a 75% majority vote by the staff to accommodate these changes.

Question:

20. Did the Union and the Board of Education violate Its contract?

21. What are the penalties for intentional fraud?

PARTIES TO THE PROCEEDING:

The Board of Education of
City of New York
110 Livingston Street
Brooklyn, New York 11201
(718) 935-2000

COUNSEL TO THE DEFENDANT:

Paul A. Crotty: Corporation Counsel
Joseph I. Lauer: Assistant Corporation Counsel
City of New York
Law Department
100 Church Street Room 6-198
(212) 788-1032
(212) 788-1055

TABLE OF CITED AUTHORITIES

Page

Black's Law Dictionary: Centennial Edition: 1,
St. Paul Minnesota West Publishing Co. (1990).....5, 6,
The Oxford Companion To The Supreme Court 8
of The United States. Edited by Kermit Hall.
New York. Oxford University Press. (1992).

PETITION

1. This petition for a writ of certiorari is brought forth pursuant to Rule 10 of the Rules of The Supreme Court of the United States for the following reasons:
   a) My rights—guaranteed under the 14th Amendment were violated. I was denied equal protection of the law.[1]
   b) The United States Court of Appeals FOR THE SECOND CIRCUIT has decided an important federal question in a way that conflicts with relevant decisions of this Court.[2]
2. JURISDICTION: I am a citizen of the United States of America, and this act occurred within the boundaries covered by the Supreme Court of the United States.
3. Petitioner having exhausted all other remedies at that time, commenced this action within 90 days of the receipt of the SUMMARY ORDER affirming the lower Court's ORDER.
4. On February 1977, Petitioner began employment with The New York City Board of Education, the Defendant Corporation.
5. Since 1981, Petitioner have been working as a teacher at I.S. 70, a public school owned, operated and managed by Defendant Corporation.
6. At all times mentioned herein, Petitioner's work performance has been superb.
7. On September 9, 1981, Petitioner was appointed to I.S. 70 under the Agreement between The New York City Board of Education and The Office of Civil Rights; because of discriminatory practices by The New York City Board of Education.
8. On September 11, 1987, Petitioner applied for a position as Educational Director at I.S. 70.
9. There were four vacancies for the position as Educational Director, and four non-Black candidates were appointed to these positions.
10. Petitioner was not appointed to any of the four available positions, even though Petitioner had more seniority than two of the four candidates, was more qualified than one of the candidates, and as equally qualified as the other three candidates.

[1] U.S. Constitution. Ratified July 9, 1868.
[2] Rules of The Supreme Court of the United States

11. Defendant's failure to appoint Petitioner to any of these four vacant positions was based solely on racial grounds and cannot be justified on any other business related pretext.
12. The Defendant's acts, practices and policies herein alleged constitute intentional and willful violation of Title VII of the Civil Rights Act of 1964, and 1991.
13. On March 28, 1988, Petitioner timely filed charges of racial discrimination with the New York City Commission On Human Rights (NYCCHR).
14. On June 25, 1990, Petitioner filed an amendment complaint alleging retaliation.
15. On February 15, 1993, NYCCHR issued its determination, finding that there was Probable Cause to credit the allegations of racial discrimination and retaliation.
16. On June 23, 1993, Petitioner received written notice from the Department of Justice stating that Petitioner was entitled to institute a civil action pursuant to Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000-e et seq.
17. Petitioner commenced this action within 90 days of the receipt of the Notice of Right To Sue by filing in the U.S. District Court, Southern District of New York on September 23, 1993.
18. The issues in this matter were brought on for trial before the Honorable Sidney H. Stein, without a jury on June 26, 1996.
19. On July 8, 1996, the Clerk of Court was directed to enter Judgment in favor of Defendant and to dismiss Petitioner's complaint.
20. On July 22, 1996, Petitioner submitted a Notice of Motion for Reconsideration pursuant to Rule 60(b). However, Rule 60(b) was an error; it should have read Rule 59(e). Petitioner brought this error to the attention of the Pro Se Clerk, and was assured that the Court would know that it was an error, and therefore, make the correction.
21. On August 5, 1996, Petitioner received an ORDER to deny the Motion. Federal Rules of Civil Procedure 60(b) was cited.
22. On July 22, 1996, Petitioner timely filed a NOTICE OF APPEAL in the United States Court of Appeals FOR THE SECOND CIRCUIT.
23. On October 29, 1996, Petitioner submitted a Motion for Leave to file Supplemental Exhibits. The Motion was granted on February 4, 1997.

24. Petitioner's Motion to Strike tampered with document from the record was denied.
25. On March 18, 1997, Petitioner received a SUMMARY ORDER affirming the lower Court's ORDER.
26. Petitioner having exhausted all other remedies at that time, commenced this action within 90 days of the receipt of the SUMMARY ORDER.

A Statement of the Facts Relevant to the Questions Presented for Review, With Appropriate References to the Record.

27. I am not an attorney. I do not pretend to be an attorney. Since 1988 to the present, with very minor exceptions, I have had to defend myself against a battery of seasoned attorneys in an effort to receive justice from such a heinous act as is discrimination. Especially when the discrimination is because of one's race and color.
28. I do not know the legal aspects of the law, but I do know the difference between the truth and an untruth, honest and dishonesty, right from wrong relevant to this case.
29. Technicalities in the laws and judicial discretion should not impede the truth; nor should it be an avenue for discrimination to occur without retribution. All I am seeking is the truth relevant in this matter and justice from this Court.
30. The SUMMARY ORDER states:

> For reasons stated in the district court's opinion, dated July 8, 1996, we agree that plaintiff has not established by a preponderance of the evidence that, by failing to appoint plaintiff to the position of Educational Director, defendant either discriminated against plaintiff on the basis of her race or retaliated against her on the basis of her claims of race discrimination.[3]

31. This SUMMARY ORDER is the basis for my petition for a writ of certiorari.
32. The irregularities were numerous, and went unchecked.
33. My Constitutional rights guaranteed under the 14th Amendment were blatantly violated and disregarded by the Court.

[3] United States Court of Appeals FOR THE SECOND CIRCUIT: SUMMARY ORDER, dated and filed March 18, 1997.

34. The Defendant was permitted to introduce evidence generated

nine (9) years after the fact as their basis for denying me the position. In spite of the fact that the evidence was the result of a conspiracy against me by the Defendant.

35. Perhaps what was even more significant was the fact that the Court allowed that evidence into the record, and my attorney did not object.

36. During my two day bench trial, the only evidence against me was the unsubstantiated "Hearsay". Again, the Court allowed this unsubstantiated "Hearsay" into the record, and my attorney failed to object.

37. My Constitutional rights guaranteed under the 14th Amendment to the Constitution of the United States were violated; because I did not have effective Counsel; the U.S. District Court, Southern District of New York dismissed my complaint and denied my Motion for Reconsideration, and the U.S. Court of Appeals affirmed the district's court opinion.

38. Only three (3) of the Defendant's Exhibits out of seventeen (17) were before the fact, but they were allowed into evidence.

39. The remaining three exhibits should have not have been entered into the record without rebuttal exhibits. However, my attorney did not object; because of his ineffectiveness. He did not have my best interest at heart.

40. Exhibit M was an observation report that was written by the Principal on April 3, 1985, just four months after an observation report that was written by the Special Education Supervisor, a highly skilled professional in the field of Special Education.

41. The issue with the April 3, 1985 observation report is one of unfairness. The observation report dated December 3, 1984, during the same school year refutes the April 3, 1985 report. The two reports are in gross conflict. My attorney did not submit the December 3, 1984 report; non did he object to the submission of the April 3, 1985 report. (Ap. Ex. 4) T. p. 123, 124, 125, 126

42. In November, 1996, after comparing the Exhibit M to an original copy of the report, I discovered that the report had been altered. My Motion to have the document Striked from the record was denied.

43. The Defendant's Exhibit N is an example of how the Defendant conspired against me in an effort to hinder justice in my case and to destroy my career as an Educator. The defendant included information along with the document that was not a part of the form letter, the basis for the exhibit. The information was not

relevant to the 11 minutes of lateness during my twenty year career.

44. The Defendant's Exhibit O was another example of the ineffectiveness of my attorney. He failed to challenge the credibility of the letter as well as its completeness. The exhibit was missing pertinent information which I included as part of the original letter.

45. The Defendant utilized a discriminatory procedure to present evidence to the Court against me; because the same letter with my rebuttal and grievance notice attached was omitted. (Appellant Exhibit 5) T. p. 127, 128, 129, 130, 131.

46. On the other hand, the Courts stated that I failed to establish by a preponderance of the evidence that the Defendant (a) discriminated against me and (b) retaliated against me as a result of my claim. At the same time, the Court denied my Motion for Reconsideration which included documents to substantiate that the Defendant committed perjury as well as tampered with official school records and falsified information. Was this reasonable?

47. The Defendant maintained that business necessity was the reason for their hiring decision. However, the Supreme Court eliminated the claim of "business necessity" as a defense against intentional discrimination by passing the Civil Rights Act of 1991.

48. More important are the deceptiveness and fraud committed by the Defendant. On July 13, 1990, the Defendant submitted a Legal Draft to the New York City Commission On Human Rights. Leslie Bass, the candidate with only five (5) years experience gained through non-academic extra-curricular activities, was listed by the Defendant as having been an interviewee only. Leslie Bass was not only a selectee, but she was serving in the position on September 9, 1987, prior to the posting for the positions September 10, 1987.

49. It took me almost $1^1/_2$ years to substantiate with official school documents that Leslie Bass was indeed a selectee.

50. The Defendant maintained that Leslie Bass had superior administrative experience and qualifications to mine. But the Defendant failed to disclose that Leslie Bass was a total failure in the position as was Maxwell Yerger. The Defendant failed to disclose that neither Leslie Bass or Maxwell Yerger were reappointed by the staff after the First year.

51. Instead, the Defendant chose to focus on me, and how I received

only "one" vote for the position three years later. Again, after the fact. I received 7/19 votes. The Defendant's position is not one about the truth. (Exhibit 1)

52. The entire testimony of Anthony Alvarado should have been excluded from the record, even before I submitted a preponderance of evidence to substantiate that Mr. Alvarado and the other witnesses had perjured themselves. Mr. Alvarado's own testimony should have become suspect when he could not remember the names of anyone present during a series of summer meetings, but the two candidates who were placed in the position on September 9, 1987, prior to the posting on September 10, 1987, and supposedly the negative information about me.

53. I presented a preponderance of evidence during my Appeal as well as Motion to submit supplemental exhibits which was granted, to substantiate that Mr. Alvarado as well as all of the witness committed perjury, but to no avail.

54. Mr. Alvarado lied under oath, stating, "from my observations of her teaching". When in fact, he appeared in my classroom near the door only one (1) time during the 1994-1995 school year for approximately 2 minutes. This was during the time when the conspiracy against me was in full force. In addition to lying under oath and committing perjury, he also gave contradictory testimony. T. p. 160, 164, 165, 168, 170, 176, 177, 178, 192 and 204. (Appellant Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22)

55. Mr. Alvarado certainly had a credibility problem. He apparently had an interest in the outcome of the case. He was also bias against me as evidenced by his testimony.

56. Mr. Alvarado's testimony was fragmented, disjointed and presented with malice. T. p. 168, 177, 178, 179, 190, 191, and 193

57. Mrs. Fay Pallen, the current Principal, was a co-conspirator against me. Her actions were arbitrary, capricious, malicious, intentional and without merit. She submitted documents to the Court that were not a part of my official school file. My attorney, due to his ineffectiveness, did not object; nor challenge any of the documents. (Defendant's Exhibit A, H, L and P.)

58. The Defendant also just arbitrarily tampered with and altered most of the documents submitted to the Court in an effort to hinder justice in my case, and ultimately to destroy my career as an Educator. (Defendant's Exhibit C, K, M, N, O)

59. I only want the truth to come out based on the evidence presented, and not the unsubstantiated "Hearsay"; nor the supposedly evidence generated nine years after the fact which is the result of a conspiracy against me.

60. If you take away Defendant's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, and AA, you are left with Defendant's Exhibits M, N, and O. Exhibit M was tampered with, Exhibit N is a form letter referring to my eleven minutes lateness over a twenty-year teaching career, and Exhibit O was tampered with.

61. The evidence presented against me by the Defendant was unsubstantiated "Hearsay". I have the experience, and the qualifications to be an effective administrator, contrary to what the Defendant has stated and written about me.

62. It was necessary for me to file yet another complaint with the City of New York Commission on Human Rights as a result of Defendant's continuous harassment against me. (Appellant Exhibits 24 and 25)

63. The Defendant made a very disparaging and injurious statement about me that is not supported by an evidence. (Appellant Exhibit 26)

64. The Defendant submitted irrelevant information to the Court in an effort to build a defense. My attorney and the Court allowed this to occur.

"s/Elizabeth Gordon".
Eizabeth Gordon, *Pro Se*
159-26 Harlem River Drive Apt. 10H
New York, New York 10039
(212) 491-6392

DRAFT

NEW YORK CITY PUBLIC SCHOOLS

JOSEPH A. FERNANDEZ
CHANCELLOR

July 13, 1990

Ms. Debra Stein
City Commission on Human Rights
52 Duane Street
New York, NY 10007

Re: Elizabeth Gordon v.
N.Y.C. Board of Education
Intermediate School 70
Beatriz Ramirez-Epstein
Kenneth Forman
Charge NO. EM01755-03/07/88-DE

Dear Ms. Stein:

In preparation of our July 17, 1990 fact finding conference, I have prepared the following response to your questions:

1. Were there four (4) Educations Directors' positions available at the time E. Gordon applied for the position.

IS 70 was divided into four (4) mini-schools, each having an Educational Director. (see posting)

2. Name/Race/Color of all applicants/persons interviewed.

- Sal Tracamo, Caucasian, White Male
- Leslie Bass, Caucasian, White Female
- Edward Levine, Caucasian, White Male
- Michelle Fratti, Caucasian, White Female
- Maxwell Yerger, Caucasian, White Male
- Elizabeth Gordan, Afro-American, Black Female

3. Name/Race/Color of all applicants/persons selected.

- Sal Tracamo, Caucasian, White Male
- Edward Levine, Caucasian, White Male
- Michelle Fratti, Caucasian, White Female
- Maxwell Yerger, Caucasian, White Male

Defendant's Exhibit W

Applicant: Leslie Bass

Position: Educational director of subschool in the O. Henry School of Writing

Qualifications: Licensed held: New York City Teach of English, J.H.S.
New York City Teacher of Reading, K-12

Teaching experience:
1 year Robert Wagner J.H.S. 167—remedial reading
21 years O. Henry School I.S. 70—English, remedial reading

Extra curricular experience:
5 years Faculty advisor to award winning school newspaper,
The O. Henry Short Story
3 years AIDP mentor with following responsibilities:
checking of attendance and follow-up for group members.
Development of morning and afternoon educational and recreationalativities for group.
Communication with teachers and parents of group members.

Staff development experience:
designing of workshops for staff to help them introduce "cloze" format into curriculum.
designing units of study for English and Reading curricula.

Staff relations:
I feel that I have earned the respect of the faculty through my interest in the school and the students, my creativity in lessons, and my consistency in classroom management.

DEFENDANT'S EXHIBIT T

E. Gordon
159-26 Harlem River Drive Apt. 10H
New York, New York 10039
September 11, 1987

The O. Henry School of Writing
333 West 17th Street
New York, New York 10011

Dear Dr. Cavanna:

I am applying for the position of Educational Director in the School of Creative Writing because I am very interested in the position.

I believe that I possess the necessary qualifications and have the ability to utilize effective communication skills, organization skills and management techniques to perform effectively. Also, I believe that I have the ability to develop and maintain an effective staff development program; to work effectively with the student body, the staff and the community. This is due to my being a licensed Assistant Principal, my varied academic and experiential background and my 10 years of teaching in the system. As a result, I believe that my varied experiences will be an asset to my effectiveness.

During my tenure in the system, I have demonstrated my ability to revise and develop effective curriculum which allowed each student the opportunity for maximum achievement. I have developed and implemented several successful behavioral modification techniques and utilized various classroom management strategies. It was also essential for me to conference frequently with general education teachers, School Based Support Teams and parents in an effort to plan individual and group programs for students. This resulted in greater achievement; academically and non-academically.

As a member of the Mayor's Voluntary Action Center, I also demonstrated my ability to communicate effectively. My responsibilities were totally public relations and administrative. For example, I was in contact with the corporate world; the business community; city governments; city, non-profit and private agencies; the cultural community; health and hospitals; the educational community and the religious community. Also, the parks and recreation departments.

As an educator, I try to keep abreast of research reports in

education. As a result, I have attended numerous workshops in the development of writing skills and improvement in writing. For example, the research reports in education included the following: "What Work" Research About Teaching and Learning; Schools Without Drugs; Becoming A Nation of Readers; The Writing Report Card: Writing Achievement In American Schools, and A Nation Prepared: Schools For The 21st Century.

If I am selected for the position, I will continue to utilize my ability, skills and knowledge to enrich the academic experiences of the students and enhance the skills of the teachers.

I would like to thank you for reading my letter of application and the attached resume.

Sincerely yours
"s/Elizabeth Gordon".
Elizabeth Gordon
File # 476462

Enclosures (12)

RESUME

Elizabeth Gordon
159-26 Harlem River Drive Apt. 10H
New York, New York 10039
Tel: Home 283-5864

EDUCATION

Advanced Certification In Educational Supervision and Administration, 1985
Hunter College, New York, New York

Master of Science In Education, 1983
Herbert H. Lehman College, Bronx, New York

Master of Science In Special Education, 1980
Herbert H. Lehman College, Bronx, New York

Bachelor of Science In Education, 1976
Herbert H. Lehman College, Bronx, New York

CERTIFICATIONS

New York State
- School District Administrator
- School Administration/Supervisor (Provisional)
- Reading Teacher
- Special Education
- Home Economics

LICENSES

New York City
- Assistant Principal
- Teacher of Special Education Programs

EXPERIENCE

Developed unique reading and writing program utilizing legends designed to improve students' reading and writing skills. Motivational/Effective.
Developed, revised and adapted existing curriculum.
Developed and planned individualized programs.
Developed materials for parents.
Coordinated and revised resource room program which resulted in higher student attendance.
Coordinated and ordered textbooks, supplies and other

EXPERIENCE (Continued)

Conducted ongoing assessment of student progress.
Developed a system for effective record keeping.
Developed effective behavioral modification strategies.
Developed effective classroom management techniques.
Assisted in city testing.

September-1997 Initiated a reading program utilizing an individualized prescriptive approach.
Designed behavioral modification programs.
Provided academic instruction to multiple handicapped students.
Provided individualized ad remedial reading.
Provided guidelines and goals of reading program to teacher and parents.
Supervised paraprofessionals.
Coordinated and ordered textbooks and supplies.
Conducted parent/teacher conferences.

Related Experience — Administrative Assistant

Assisted in establishing effective office procedures.
Assisted in planning staff development workshops.
Assisted in planning daily activities.
Assisted in completing reports.
Assisted in planning parent workshops.
Assisted in budgeting.

Other Experience

Taught clothing construction and design.
Initiated tutorial program.

Professional

New York City Chapter, New York State Association of Teachers of the Handicapped, Inc.
Council for Exceptional Children.
Association for the Help of Retarded Children.
The Council of Administrators of Special Education.
A B N E Y.

Staff Development	Conducted mandated teacher training in Decentralization of Special Education.
Publication	Slavery and The Slave Trade in Zanzibar, London, England.

ELIZABETH GORDON
159-26 Harlem River Drive
Apt. 10H
New York, N.Y. 10039
(212) 491-6392 - Evening
(212) 255-6770 - Daytime

ASSISTANT PRINCIPAL/PRINCIPAL

General professional background consists of over fifteen years in the field of education with emphasis on Learning Disabilities, Special Education and Administration. Hold two Master's Degrees, in Education and Special Education as well as an Advanced Certification in Educational Supervision and Administration and a license as an Assistant Principal on the Elementary, Intermediate and Junior High School levels.

Capable of developing workshops for staff including proposal/grant writing, and parents; designing curriculum, counseling, teacher-training, special programming and general administrative responsibilites.

Demonstrate a high degree of proficiency in motivating, stimulating and working closely with teachers, parents and students in a continuous effort to encourage a sound educational atmosphere.

Offer creative thinking ability, resourceful in developing and initiating new and innovative programs with positive impact on students. Have ambition, flexibility and the capacity required to accomplish goals.

EDUCATIONAL
BACKGROUND

1985 Advanced Certification in Educational Supervision and Administration.
Hunter College, New York

1983 Master of Science in Education, Lehman College

1980 Master of Science in Special Education, Lehman College

1976 Bachelor of Science in Education, Lehman College

LICENSES

New York City
Principal Day Elementary School
Assistant Principal (Elementary, Intermediate, Jr. H.S.)
Teacher of Special Education Programs

PROFESSIONAL EXPERIENCE

CERTIFICATIONS

New York State
School District Administrator (Permanent)
School Administrator/Supervisor (Provisional)
Reading Teacher (Permanent)
Special Education - Teacher (Permanent)
Home Economics - Teacher (Permanent)

1981-present INTERMEDIATE SCHOOL 70, 333 West 17th St., New York, N.Y. 10011
Learning Disabilities Specialist
Assist in citywide testing, coordinate and plan parent-teacher conferences, coordinate and, revise resource room program, order textbooks, supplies and instructional materials. Developed unique reading/ writing program, revised and adapted existing curriculum, plan individualized programs, materials for parents, effective behavioral modification strategies, management techniques. Provided individualized and group instruction as well as guidance and assistance for parent/ students. Engaged in effective proposal/grant writing.

1977-1981 J118 Bronx, 1201 M, P207 M
Teacher of Special Education
Designed and implemented an effective behavioral and modification program, initiated a reading program, monitored students' progress, provided individualized remedial reading instruction, guidelines and goals to teachers and parents, supervised paraprofessionals.

RELATED
EXPERIENCE

1984-1985 WESTSIDE ALLIANCE DAY CARE CENTER,
New York, N.Y.
Administrative Assistance "Intern"
Assisted in establishing effective office and safety procedures, planned staff development workshops, daily activities, parents workshops, budgeting.

RELATED EXPERIENCE

1987 WESTSIDE ALLIANCE DAY CARE CENTER, New York, N.Y.
Involved in the administrative and special programming. Responsibility included two major projects.

1974 ISAAC TOWERS COMMUNITY CENTER FOR ADULTS "INTERN"
Taught clothing construction and design.
Initiated after school tutorial program.

PROFESSIONAL ORGANIZATIONS AND MEMBERSHIP

Congress of Racial Equality
National Council of Negro Women
The New York Urban League
NYC Chapter, NY State Association of Teachers of the Handicapped, Inc.
Council for Exceptional Children
Association for the Help of Retarded Children
Association of Black Educators of New York
National Association for The Advancement of Colored People
American Museum of Natural History

PUBLICATIONS, HONORS AND AWARDS

1974 Slavery an The Slave Trade In Zanzibar, London, England
1987 Certification or Recognition for Mayor's Voluntary Action Center
1988 Who's Who In American Education

1988 Completed The Board of Education's Education Evaluator Course
1989 Completed The UFT JHS/Intern School Programming Course
1990 Impact II Developer Grant-Award

CREDENTIALS

DEGREES:

Advanced Certificate In Educational Supervision and Administration
Hunter College 1985
Master of Science (Education) - Lehman College 1983
Master of Science (Special Education) - Lehman College 1980
Bachelor of Science - Lehman College 1976

CERTIFICATIONS:

SAS	New York State	1985
SDA	New York State	1985
Reading Teacher	New York State	1983
Home Economics/Special Education	New York State	1980

LICENSES:

Teacher of Emotionally Handicapped Students	NYCBd of Ed.	1981
Assistant Principal - Intermediate/JHS/Elem.	NYCBd of Ed.	1986
Principal - Elementary	NYCBd of Ed.	1992

Internship In Administration: Westside Alliance Day Care Center 1984

In-Service Courses Completed:

Intermediate/JHS Programming Course	UFT	1989
Educational Evaluator	NYC Board of Education	1988
Computers In Special Education	Bank Street Institute	1986
Family Living Including Sex Ed	NYC Board of Education	1985
Implementing Career Education	NYC Board of Education	1983

In-Service Courses Taught:

Mandated Training:
Special Education/General Education A New Relationship 1987

Service Awards:

Certificate of Recognition—Mayor's Voluntary Action Center 1987
Certificate of Merit Award—Bureau of Human Services 1990
Certificate of Appreciation—The Aim's Program 1989

Certificates:

CSIP—I.S. 70 D2 1987

Publications/Curriculum Development/Study Guides/Honors/Awards:

- Slavery and The Slave Trade In Zanzibar, London, England 1974
- Career Education Program: Basic Lessons In Career Educ. 1992
  a) List from Career Resource Center
  b) Letter to business community, attorneys, etc.
  c) Arranged visit from Ms. Shirley Alon—The Office of External Programs/Open Doors
  d) Letter of "Thank You" to Ms. Alon from Mr. Ma
  e) Letter of "Thank You" from myself
- Designed program of Tribute to Dr. King—I.S. 70 1992
  (Program appeared in NYCBd of Education's Calendar of Events—the only on in D2)
- Developed and implemented Career Exploration/ Critical Thinking Skills—I.S. 70 1991
- IMPACT II Award 1990
- Who's Who In American Education National Reference—Washington, D.C. 1987
- Profiled in The Daily News 1987
- MAC Booklet 1987
- Planned recreational/cultural program for children residing in temporary shelters—D2 1987
- Letter of acknowledgment from Search Committee for Chancellor—NYC Board of Education 1987
- Honors In Education—Lehman College 1976
- Researched and developed study guide to The Tweed Gallery 1987

Committees:

a)	Discipline	I.S. 70	1991
b)	Curriculum	I.S. 70	1990, 1988, 1986
c)	Professional Staff Development for Resource Room teachers	D2	1988
d)	CSIP	I.S. 70	1986

Community Services:

Initiated clothing construction program 1975
(Isaac Towers Community Center—Adults)

Supervision:

Teacher-In-Charge	D2	1991
Teacher-In-Charge	D2	1994

CREDENTIALS—(Addendum)

Initiated successful reading program—Elementary grades 1980 - 1981

Parent advisor 1981 - 1982

Teacher Representative—PTA Executive Board; Articulation with feeder schools along with principal (8.1) Homeroom teacher, general education approximation 30 students 1983 - 1984

Sixth grade assembly leader—approximation 250 general and special education student; Articulation with feeder schools along with Principal; Member CSIP Committee; Principal representative PTA meeting 1985 - 1986

Member CSIP Committee; Member Curriculum Committee; Articulation with feeder schools along with Principal; Accompanied Principal to Principal's Conference 1986 -1987

Lunchroom and Hall patrols 1981 - Present

Designed/Developed educational objectives/goals for school 1986 -1987

Initiated book making club (Hand sewn), Coordinated cultural and educatio l trips; Member, Curriculum Committee 1987 - 1988

Represented Principal at Chancellor's Conference, Coordinated both Black History Month and Women's History Month displays, Developed a fashio: and design club; A.I.D.P. Club Leader (Attendance Improvement/Drop-out Prevention); Member, Professional Staff for Resource Room Teachers; Coordinated fund raiser for United Negro College Fund 1988 - 1989

Implemented Fashion and Design Program, Coordinated school contest for city-wide participation (Students took 2nd place) 1989 - 1990

Represented Principal at Borough President's office Re: safety issues 1989 - 1990

Designed, Developed, Implemented Fashion Program, Developed program (school wide) in Career Exploration (Critical Thinking Skills) 1990 - 1991

Coordinated letter writing project to congratulate President Clinton 1993 - 1994

Coordinated both Black History and Women's History month activities 1995 - 1996

UNITES STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18 day of March, one thousand nine hundred and ninety-seven.

PRESENT:

Hon. John M. Walker, Jr.,
Hon. Joseph M. McLaughli,

Circuit Judges.

Hon. Denny Chin,*

District Judge.

ELIZABETH GORDON,

Plaintiff-Appellant,

v. No. 96-9011

BOARD OF EDUCATION FOR THE
CITY OF NEW YORK,

Defendant-Appellee.

APPEARING FOR APPELLANT: ELIZABETH GORDON, PRO SE
NEW YORK, NEW YORK

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* The Honorable Denny Chin of the United States District Court for the Southern District of New York, sitting by designation.

APPEARING FOR APPELLEE JOSEPH I. LAUDER, ESQ.
ASSISTANT CORPORATION COUNSEL
NEW YORK, NEW YORK

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York (Stein, J.), and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgement of said district court be and it hereby is AFFIRMED.

Plaintiff-appellant Elizabeth Gordon, who is proceeding pro se, appeals from a judgement of the district court entered on July 10, 1996 following a two day bench trial, dismissing her employment discrimination complaint, which was brought pursuant to 42 U.S.C. § 2000e-5 ("Title VII") and 42 U.S.C. § 1981. For the reasons stated in the district court's opinion, dated July 8, 1996, we agree that plaintiff has not established by a preponderance of the evidence that , by failing to appoint plaintiff to the position of Educational Director, defendant either discriminated against plaintiff on the basis of her race or retaliated against her on the basis of her claims of race discrimination. See Holt v. KMI Continental, 95 F. 3d 123, 130 (2ns Cir. 1996) (Title VII plaintiff cannot establish pretext by relying on her personal belief that she was the most qualified person for the position). We thus conclude that the district court's finding that plaintiff failed to prove discrimination was not clearly erroneous.

See Fed. R. Civ. P. 52(a). We also find no merit to any of Gordon's claims of evidentiary error.

Accordingly, we affirm that the judgement of the district court.

"s/Hon. John M. Walker, Jr." "s/Hon.JosephM. McLaughli"

"s/Hon. Denny Chin"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,
Plaintiff,

93 Civ. 6660 (SHS)

-against-

ORDER

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

SIDNEY H. STEIN, U.S. District Judge.

Plaintiff Elizabeth Gordon brought this action against defendant the Board of Education of the City of New York (the "Board") alleging racial discrimination and retaliation. A two-day bench trial was held on June 26 and 27, 1996, which included the testimony of plaintiff. The following are the Court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a)

FINDINGS OF FACT

1. Ms. Gordon, an African-American woman, is now, and has been at all times relevant to this action, a special education teacher for the Board at Intermediate School No. 70 ("I.S. 70"). I.S. 70 is located at 333 West 17th Street, New York, New York.

2. In the summer of 1987, the Board decided to reorganize I.S. 70 by dividing it into four "mini-schools." (Stip. at 1.) It had determined at that time that this reorganization was necessary to improve the school, which had been suffering from declining enrollment and problems with safety and academics. Each mini-school was to have a central theme, such as Science & Technology or Journalism.

3. The four mini-schools were to be supervised by one "Project Director," who would be the equivalent of a principal, and each mini-school would have an "Educational Director."

4. The Educational Directors were to act as supervisors responsible for the day-today operations of the mini-schools. (Stip. at ¶ 2.) Each Educational Director would be responsible for developing and planning, under the direction of the Project Director, a staff development plan for the mini-school, which would entail workshops, one-to-one consultation with staff, conferences, demonstration lessons and other activities for teachers and parents. The positions would require leadership and interpersonal skills and would involve substantial administrative duties.

5. The Educational Director positions involved significant increases in responsibility for the teachers who received them, but did not include increased salaries. (Stip. at ¶ 2.) These positions were to be "compensatory time" positions, which meant that the teacher would not have any classroom responsibilities.

6. The Board appointed four teachers — Leslie Bass, Sal Tricamo, Ed Levine and Sandra Yark — to these positions on an interim basis. The interim appointments wore only for the summer and the positions were to be filled on a permanent basis in the fall. Ms. Yark did not seek to be appointed on a permanent basis. Mr. Levine lacked the ability to interact with the parents to the extent required by the position and was removed shortly alter appointment.

7. The Board sought teachers with strong leadership qualities, strong administrative abilities, and the support of peers and parents in the school district for these positions. Because this restructuring was being done on a tight time schedule and during the summer, the Board sought information about the interim and potential permanent candidates primarily by talking to administrators, teachers and parents. As a result, experience and reputation were important factors in selection.

8. In September of 1987, the four Educational Director positions were posted at I.S. 70 and the selection criteria were listed as: (1) a New York City teaching license; (2) an ability to communicate effectively; (3) an ability to work and relate well to staff, students, parents and outside consultants; (4) an ability to develop and maintain an effective staff development program; (5) an ability to work with the project director in developing an effective school program; and (6)at least five years of recent teaching experience. (Plaintiff's Exh. 1.)

9. In September of 1987, Ms. Gordon applied and was interviewed by the Project Director, Beatrice Ramirez-Epstein, for the position of Educational Director. There were only five applicants for the four positions and Ms. Gordon was the only African-American candidate. (Stip. at ¶4) All five candidates were interviewed in the same manner.

10. Ms. Gordon was not given the position. Instead, the positions were given to the other four applicants — Ms. Bass, Mr.Tricamo, Max Yerger and Michelle Fratti. All those selected for the position as well as the other two interim appointees were white.

11. Shortly after the positions were filled, Ms. Gordon filed a complaint with the New York City Commission on Human Rights concerning the filling of these positions.
(Stip. at ¶ 7.)

12. Ms. Gordon filed that action because she believed that she was more qualified than some people hired and as equally qualified as the others. Ms. Gordon based this decision on her review of the other individuals' resumes. Ms. Gordon has extremely impressive academic credentials, which include an undergraduate and two masters degrees in the education field and an advanced certification in educational supervision and administration. She also had attended many conferences, had other professional licenses, and had completed a one year internship outside the school.

13. Although impressive, these credentials were not the exclusive type of credentials sought by the Board for the Educational Director positions. The Board viewed these positions as extremely important to the revitalization of I.S. 70 and thus wanted the positions filled with individuals with proven records in leadership and administrative responsibilities. Furthermore, the Educational Directors were responsible for developing new programs on short notice and thus the Board sought individuals who could handle the task immediately without significant training.

14. Ms. Gordon admits that she had no prior administrative experience in the school environment, which was the type of administrative experience sought by the Board, but she thought the Board should have

considered her internship experience. Ms. Gordon had previously applied for numerous other administrative positions within the school system and had been turned down for lack of administrative experience. Most of these positions, however, were fairly high level positions. Ms. Gordon did not participate in the voluntary non-compensatory time programs at the school that other teachers participated in to obtain administrative experience. Those positions generally involve handling administrative matters without relinquishing the teacher's classroom obligations and thus generally required time before or after school, during lunch, or during the summer. For example, such opportunities available at I.S. 70 included working: (1) with the Program Committee to schedule student classes, (2) with a committee to screen materials for school use, (3) as or with the Testing Coordinator on scheduling and procurement of standardized tests, (4) with the Crisis Intervention Program, (5) as the Dean of Discipline, or (6) with the Attendance Improvement and Drop Out Prevention Program (the "AIDP"). Ms. Gordon was not involved with any such programs and, instead, sought the high level Educational Director position in order to gain administrative experience in order to pursue her other career aspirations, which included becoming assistant principal, principal and chancellor. She had applied unsuccessfully for 200 or more administrative positions, including that of Chancellor of the New York City school system.

15. The Board did subsequently offer Ms. Gordon a position that would have allowed her to gain administrative experience, but Ms. Gordon quit after a couple of months because she did not feel that the Board had clearly delineated the responsibilities of the position.

16. This Court finds that the individuals who were appointed to the positions of Educational Directors were more qualified for the position of Educational Director than Ms. Gordon. Ms. Gordon did not have a reputation as an outstanding teacher and, more importantly, she had little administrative experience and no record of leadership ability.

17. All of the individuals selected had more experience teaching than Ms. Gordon. When the positions were filled, Ms. Gordon had approximately six years of full time teaching experience, whereas Mr. Tricamo had 14 years, Ms. Bass had 22 years, Mr. Levine had 16 years, Mr. Yerger had over 20 years, and Ms. Fratti had over 10 years.

18. Furthermore, all of these individuals had experience teaching general classes which involved large class sizes. All of Ms. Gordon's experience was as a resource room teacher, which involved teaching smaller classes. In 1987, the maximum size of Ms. Gordon's classes was five students, but that number has since increased to eight students. A teacher of a general class will generally have experience with as many as 32 students.

19. The individuals selected also had more administrative experience than Ms. Gordon. Mr. Tricamo had been I.S. 70's Administrative Assistant, which required him to handle a significant portion of the day-to-day matters necessary to the school, and the District Coordinator of the AIDP. Ms. Bass had experience in stuff development, which included designing workshops and curricula for staff, and also worked in the AIDP program and coordinated the school's newspaper. Mr. Levine had been a college instructor and had administrative and staff development experience from having worked as the Coordinator for Staff Development, Impact II Program, for the Central Board of Education. Ms. Fratti, who is now a principal in Queens, also had strong administrative credentials, which included designing the staff development workshops, and organizing and implementing "Gifted and Talented" programs. She also had served as Administrative Assistant - which is a similar position to an Educational Director - at I.S. 137 in the Bronx. Mr. Yerger's experience in the field of education included, among other things, teaching at various levels from elementary school to college, developing staff development programs and curricula, developing reading programs and acting as an educational consultant.

20. Two of the teachers selected — Mr. Tricamo and Ms. Bass — were especially active during the planning stages of the new project and were strongly supported by the school's parents, teachers and administrators.

21. Mr. Yerger had a proven record of leadership in the area of developing programs from his participation in the Young Astronauts' program. He had extensive experience and interest in the science area, which was considered especially valuable because he was selected to be the Educational Director of the Science & Technology mini-school.

22. Ms. Gordon, although meeting the qualifications to apply for the position of Educational Director, was not as qualified to perform the job as the four other candidates. She was not given the position because she lacked administrative experience and a record of leadership, and because she did not have a reputation among parents and peers as a quality teacher who could interact well with parents, students and other teachers, particularly in a leadership role. Ms. Gordon's record also included an unsatisfactory lesson evaluation and letters for excessive tardiness. She did not have the support of the parent body or her peers for the Educational Director position.

23. The primary decision makers, Anthony Alvarado and Ms. Ramirez-Epstein, are both minorities who have worked to improve educational opportunities for minority students.

24. While the four Educational Directors were white, the Project Director, Ms. Ramirez-Epstein, was Hispanic, the Dean of Students, Mr. Lang, was African-American and the Dropout Prevention Coordinator, Ms. Stevens, was African-American. Mr. Lang and Ms. Stevens were both on the school's Executive Cabinet. The Board also approached another African-American woman to encourage her to apply for the position, but she declined.

25. Ms. Gordon also lacked the support of her peers. In the three years following the initial appointments of the Educational Directors, the selections were made by the teachers themselves. Ms. Gordon applied for the position during one year and did not receive significant peer support.

26. In 1990, Ms. Gordon applied for an "Administrative Assistant" position with the principal of I.S. 70, William Ma. This position, which also did not involve an increase in salary but was a "compensatory time" position, involved the handling of a variety of administrative matters necessary to run the school. (Stip. at 8.) There was only one other candidate for this position, another African-American teacher at I.S. 70 named Irma Straughan.

27. Ms. Gordon did not receive the Administrative Assistant position which instead went to Ms. Straughan.

28. Ms. Straughan received the position because she was more qualified for the position of Administrative Assistant than Ms. Gordon. Ms. Straughan had more years experience as a teacher than Ms. Gordon. She also had administrative experience as a bilingual program coordinator, and she was bilingual in Spanish and English, which the defendant considered valuable because the school was 30% Hispanic at the time. Ms. Gordon still did not have any administrative experience in the school system other than the few months at the position she voluntarily relinquished.

29. Furthermore, Ms. Straughan had a reputation for being an outstanding teacher whereas Ms. Gordon was considered to be average at best. Ms. Straughan was selected to participate in a program for teachers with leadership potential at approximately this same time, and she went on to become the Interim Acting Principal at I.S. 70.

30. Mr. Ma, though inconvenienced because he was required to respond to Ms. Gordon's complaint, was not influenced by the fact that Ms. Gordon filed a complaint alleging racial discrimination, and did not hire Ms. Straughan because of that complaint.

31. In the past two years, Ms. Gordon received "Unsatisfactory" ratings on her yearly evaluations, and the administration at I.S. 70 is considering bringing her up on departmental charges concerning quality of the instruction she has been providing to her students.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5 and 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in the Southern District of New York pursuant to 28
U.S.C. § 1391(b) because the defendant resides here and because "a substantial part of the events or omissions giving rise to this claim" occurred here.

3. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to discriminate against any individual with respect to the terms and conditions of employment because of such individual's race. 42 U.S.C. § 2000e-2(a).

4. In a case such as this one where the plaintiff claims that the defendant's purported reason for the unfavorable employment decision is a pretext for racial discrimination, the applicable law is governed by the three-tiered burden shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973). See De La Cruz v. New York City Human Resources Admin. Dept. of Social Servs., 82 F.3d 16, 20 (2d Cir. 1996); Henry v. Daytop Village, Inc., 42 F.3d 89, 93-94 (2d Cir. 1994).

5. In the first tier, plaintiff must present a prima facie case of racial discrimination. To make this showing, plaintiff must demonstrate that: (1) she is a member of a protected class; (2) she was qualified for the position sought; (3) she was subject to an adverse employment decision; and (4) either the position remained open or she was replaced by someone not a member of her protected class. De La Cruz, 82 F.3d at 20; Ramseur v. Chase Manhattan Bank, 865 F.2d 460, 464 (2d Cir. 1989). The plaintiff's burden to show make this prima facie showing of discrimination is low. See Chambers v. TRM Cop. v Ctrs. Corp., 43 F.3d 29, 37 (2d Cir. 1994); Dister v. Continental Group. Inc., 859 F.2d 1108, 1114 (2d Cir. 1988).

6. In the second tier, once the plaintiff makes an evidentiary proffer that satisfies the requirements of a prima facie case, an inference of discrimination exists and thereby shifts the burden of production to the employer to proffer a legitimate non-discriminatory reason for its action. See De La Cruz, 82 F.3d at 20; Sutera v. Schering, 73 F.3d 13, 16 (2d Cir. 1995).

7. In the third tier, assuming that the employer has proffered a seemingly legitimate reason, plaintiff must prove by a preponderance of the evidence that the nondiscriminatory reason was in reality a pretext for unlawful discrimination. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510-11, 113 S. Ct. 2742, 2749, 125 L.Ed.2d 407 (1993); Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1224-25 (2d Cir. 1994).

8. Plaintiff has met her initial burden of presenting a prima facie case. As an African-American, she is a member of a protected racial class. She possessed the basic qualifications for the position of Educational Director. She suffered an adverse employment decision

when she did not receive the position, and the position was filled by individuals who were not members of her protected class.

9. Defendant has proffered a non-discriminatory reason for the employment decision: that the plaintiff was not as qualified for the position as the other applicants who received the positions.

10. Plaintiff's theory is based entirely on her own conjecture and is not supported by any evidence other than her own subjective beliefs. More importantly, plaintiff's contentions are refuted by substantial evidence. The other applicants were more qualified for the position than Ms. Gordon and the defendant's decision was based on a legitimate non-discriminatory reason. Accordingly, plaintiff has failed to prove by a preponderance of the credible evidence that she was denied the position of Educational Director because of her race.

11. Title VII also prohibits employers from taking retaliatory actions against an employee for opposing allegedly discriminatory practices. 42 U.S.C. § 2000e-3(a). A retaliation claim is also governed by the McDonnell Douglas analysis set forth above.

12. A prima facie case of retaliation requires plaintiff to show that: (1) she was engaged in an activity protected by Title VII; (2) her employer was aware of her participation; (3) the employer took adverse action against plaintiff; and (4) a causal connection existed between the plaintiff's activity and the adverse action taken by the employer. See Van Zant v. KLM Royal Dutch Airlines, 80 F.3d 708, 714 (2d Cir. 1996); Cosgove v. Sears, Roebuck & Co., 9 F.3d 1033, 1039 (2d Cir. 1993). Ms. Gordon has made this required showing: she filed a complaint with the EEOC prior to applying for the Administrative Assistant position, the defendant was aware of that complaint, and Ms. Gordon was denied the position.

11. Defendant has proffered a legitimate non-retaliatory reason in support of its employment position: that the other applicant was more qualified for the position than Ms. Gordon.

12. Plaintiff did not prove by a preponderance of the credible evidence that she was denied the Administrative Assistant position in retaliation for her allegations of race discrimination.

CONCLUSION

Because the evidence in this action does not support a finding that plaintiff was discriminated against on the grounds of her race or that she was subject to retaliation, the Clerk of Court is directed to enter judgment in favor of defendant and the complaint should be dismissed.

Dated: New York, New York
July 8, 1996

SO ORDERED:

"s/Sidney Stein, U.S.D.J."
Sidney Stein, U.S.D.J.

U.S. DISTRICT COURT
FILED
JULY 10, 1996
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

93 CIVIL 6660(SHS)
JUDGEMENT

The issues in the above entitled action having been brought on for trial before the Honorable Sidney H. Stein, Unites States District Judge, without a jury on June 26, 1996, and at the conclusion of the tiral the Court having reserved its decision, and the Court thereafter on July 8, 1996, having rendered its Order, finding in favor of the Defendant, it is,

ORDERED, ADJUDGED AND DECREED: That the Complaint be and it is hereby dismisse; accoridngly, the above-entitled action is removed from the Court's active docket.

Date: New York, New York
July 10, 1996

JAMES M. PARKINSON

By: "s/John S. Hagen"
Deputy Clerk

MICROFILM
JULY 12, 1996 12:00 PM

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 7/15/96

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

93 CIVIL 6660(SHS)
ORDER

SIDNEY H. STEIN, District Judge.

Plaintiff Elizabeth Gordon has moved pursuant to Fed.R.Civ.P. 60(b) for relief from this Court's order issued after a two-day bench trial on July 8, 1996 dismissing her complaint and entering judgment in favor of defendant. Gordon seeks to have her discrimination and retaliation claims reinstated because her attorney was ineffective and as a result she was unprepared to articulate her responses to questions at trial. In support of this motion, Gordon has submitted a lengthy affidavit and numerous documents which she claims show that defendant discriminated and retaliated against her.

Fed.R.Civ.P. 60(b) permits this Court, "[on] motion and upon such terms as are just, [to] relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . .; (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." See Matarese v. LeFevre, 801 F.2d 98, 106 (2d Cir. 1986); Petersen v. Valenzano, 803 F. Supp. 875, 877 (S.D.N.Y. 1992).

Gordon apparently relies upon subpart (6), which "confers broad discretion on the trial court to grant relief when 'appropriate to accomplish justice.'" Matarese, 801 F.2d at 106 (quoting International Controls Corp. v. Vesco, 556 F.2d 665, 668 n. 2 (2d Cir.1977), cert. denied, 434 U.S. 1014, 98 S.Ct. 730, 54 L.Ed.2d 758 (1978). This section is "properly invoked where there are extraordinary circumstances, or where the judgment may work an extreme and undue hardship, and should be liberally construed when substantial justice will thus be served." Matarese, 801 F.2d at 106 (internal citations omitted); see also DeWeerth v. Baldinger, 38 F.3d 1266, 1272 (2d Cir. 1994); Mendell v. Gollust, 909 F.2d 724, 731-32 (2d Cir. 1990).

Gordon has failed to show extraordinary circumstances or that the judgment causes any extreme or undue hardship or that substantial justice would be served by granting her motion. Instead, Gordon attempts to retaliate her claims which this Court heard and rejected. A motion pursuant to Fed.R.Civ.P. 60(b)(6) "may not be used as a substitute for appeal." Matarese, 801 F.2d at 107; Schwartz v. Dolan, 159 F.R.D. 380, 383 (N.D.N.Y. 1995). Furthermore, Gordon has failed to show that any other provisions of Fed.R.Civ.P. 60(b) are applicable.

Accordingly, Gordon's motion for relief from judgment is denied.

Dated: New York, New York
August 5, 1996

SO ORDERED:

"s/Sidney Stein, U.S.D.J."
Sidney Stein, U.S.D.J.

NOTICE OF PROBABLE CAUSE DETERMINATION
AND
INTENTION TO PROCEED TO PUBLIC HEARING

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

In the Matter of the Complaint of

ELIZABETH GORDON,
Complainant,

Complaint No.
EM01755-03/07/88-DE

against

NEW YORK CITY BOARD OF EDUCATION,
INTERMEDIATE SCHOOL 70,
BEATRIZ RAMIREZ-EPSTEIN,
KENNETH FORMAN, Executive Assistant
to the Superintendent.

Respondents.

PLEASE TAKE NOTICE that the undersigned, upon review of the investigation conducted in this matter, has determined that there is probable cause to credit the allegations of the complaint that respondents have violated the Administrative Code of the City of New York ("Administrative Code").

There is probable cause to credit the allegations of the complaint that respondents have unlawfully discriminated against complainant in the terms and conditions of her employment 8-1071(a) and in retaliation for objecting to discriminatory practices. By their acts, respondents are charged with violating Sections 8-107 1(a) and 8-108 of the Administrative Code.

PLEASE TARE FURTHER NOTICE that it is the intention of

the Law Enforcement Bureau to notice this case for public hearing and adjudication of this matter is not resolved by a conciliation agreement, the terms of which are embodied in consent decree executed by complainant, respondents, and by the Commission. This case will prosecuted by the Law Enforcement Bureau.

Dated: New York, New York
2/25, 1993

For the Commission

"s/Randolph E. Wills"
Randolph E. Wills
Managing Attorney
for Law Enforcement
NYC Commission on Human Rights
40 Rector Street
New York, New York 10006

ADDITIONAL NOTICE - PLEASE READ

While the foregoing notice informs that parties, as required by law, that the Commission's Law Enforcement Bureau has concluded that prosecution is warranted, an actual adjudication of the merits of this complaint is not made until after the holding of a public hearing before an impartial hearing officer. At such a hearing, the complainant, the respondent, and the Commission's Law Enforcement are given an opportunity to present evidence and to examine and cross-examine witnesses.

As substantial rights of the parties are effected by the adjudicated or conciliated settlement of this complaint, complainant and respondents are reminded that each has the right to be represented by counsel of choice.

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
In the Matter of the Complaint of :

ELIZABETH GORDON,

Complainant, AFFIRMATION OF SERVICE

Complaint No. EM01755-03/97/88-DE

-against-

NEW YORK CITY BOARD OF EDUCATION,
INTERMEDIATE SCHOOL 70,
BEATRIZ RAMIREZ-EPSTEIN,
KENNETH FORMAN, Executive Assistant :
to the Superintendent,

Respondents. :

RANDOLPH E. WILLS, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am not a party to the above-captioned proceeding; am over 18 years of age; and, reside at New York, New York.

2. On 2/25, 1993 I served the within "Notice of Probable Cause Determination and Intention to Proceed to Public Hearing" by depositing a true copy thereof enclosed in a postpaid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to each of the following persons at the last known address set forth after each time.

Elizabeth Gordon
159-26 Harlem River Drive
New York, NY 10039

Shirley Rowe, Esq.
New York City Public Schools
Office of Legal Services
110 Livingston Street
Brooklyn, New York 11201

Dated: 2/25/93

"Randolph E. Wills"
Randolph E. Wills

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
In the Matter of the Complaint of :

ELIZABETH GORDON,

Complainant,

Complaint No.EM01755-03/07/88-DE
EEOC# 16F-88-0858

against

NEW YORK CITY BOARD OF EDUCATION,
INTERMEDIATE SCHOOL 70,
BEATRIZ RAMIREZ-EPSTEIN,
KENNETH FORMAN, Executive Assistant :
to the Superintendent,

Respondents.

I, Elizabeth Gordon residing at 159-26 Harlem River Drive, NY, NY 10039 charge the above named respondents whose address is (Board of Education) 65 Court Street, Brooklyn, NY 11201 (Intermediate School 70) 333 West 17th Street, NY, NY 10011 with an unlawful discriminatory practice relating to employment at Intermediate School 70 on or about November 2, 1987 by denying me a promotion because of my:

RACE (x), COLOR (X), CREED ( ) NATIONAL ORIGIN ( ),
HANDICAP/DISABILITY ( ), AGE ( ), SEX ( ),
MARITAL STATUS ( ), DUE TO RETALIATION ( ),
SEXUAL ORIENTATION ( ), CONVICTION RECORD ( )

The particulars are:

I. I began to work for the New York City Board of Education in 1977 as a Teacher. I have been working as a Teacher at Intermediate School 70 for the past (6) years. Upon information and belief, my job performance has been and is satisfactory.

II. I believe that I have been discriminated against and denied a

promotion because of my race and color (Black) for the following reasons:

A. On or about September 11, 1987, I applied for a promotion as a an Educational Director. I am well qualified for this position, and there were four vacancies at Intermediate School 70 which is my work location.

B. On or about October I, 1987, Beatrice Ramirez-Epstein, Director, who is non-Black, interviewed me for the position in question. On or about November 2, 1987, I learned that I was not selected for the job.

C. Upon information and belief I was the only minority in the school (T.S. 70) that applied for the position. Four non Black individuals were hired in these vacancies. Two of them were already serving in the job prior to the posting of the vacancies and two were outside hirings. (They were not working at P.S. 70.) I believe that I am better qualified for the job than the individuals who were selected.

D. On or about November 14, 1987, in a union grievance hearing, Respondent Ramirez-Epstein stated that she consulted "with the parents" regarding my employment application. I believe that respondent Ramirez-Epstein was referring to the parents' and Teachers' Association President and two other parents who are non-Black. Furthermore, this procedure is not customary and, upon information and belief Respondent Ramirez-Epstein did not consult "with the parents" about the job applications of the individuals who were selected for the vacancies.

E. Kenneth Forman, the Executive Assistant to the Superintendent who is non-Black, was present at the above mentioned hearing My grievance was denied by Mr. Forman, allegedly because "I do not have the expertise and administrative background required to assume the responsibility as outlined in the job description." This allegation is not true.

III. Given all the above, I can only conclude and, therefore, charge that I have been discriminated against. I am Black . I charge that Respondent discriminated against me in violation of the Administrative Code of the City of New York and that as a result of Respondent's unlawful

discriminatory practices I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I also charge that the above-named Respondents have violated Title VII (Civil Rights Act 1964, as amended) on the basis of my race and color and hereby authorize the City Commission on Human Rights to accept this verified complaint on behalf of the Equal Employment Opportunity Commission, subject to the statutory limitations contained in Title VII.

I have not commenced other civil, criminal or administrative act or proceeding in any court or administrative agency based upon the same grievance.

CITY OF NEW YORK)
) ss.:
COUNTY OF N. Y.)

Elizabeth Gordon, being duly sworn, deposes and says: that she is the complainant herein: that she has read the foregoing complaint and knows the contents thereof: that the same is true of her own knowledge, except as to the matters therein abated on information and belief, and that as to these matters she believes the same to be true.

Subscribed and sworn to before me
this 28 day of March, 1988

"s/Rafael Robles"
Rafael Robles
Notary Public, State of New York
No. 41-4681839
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1988

compl 10/79 -2

"s/Elizabeth Gordon"
(Signatiure of Complainant)

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

In the Matter of the Complaint of :

ELIZABETH GORDON,

Complainant,

AMENDED COMPLAINT
Complaint No.EM01755-03/97/88-DE

-against-

NEW YORK CITY BOARD OF EDUCATION,
INTERMEDIATE SCHOOL 70,
BEATRIZ RAMIREZ-EPSTEIN,
KENNETH FORMAN, Executive Assistant :
to the Superintendent, WILLIAM MA, PRINCIPAL

Respondents.

Complaint No. 01755-03/07/88-DE is hereby amended as follows:

1. Add William Ma, Principal, as a named Respondent.
2. Add "retaliation" as a basis for discrimination.
3. Add the following to section II:

F. William Ma was appointed Principal of IS 70 in or about April 1989.

G. Until about March 1990, Mr. Ma had made complimentary remarks about my work performance and had selected me to attend several conferences in October and November 1989.

H. On or about March 13, 1990, Mr. Ma spoke to me in a harassing manner about my discrimination complaint, and he urged me to drop it, claiming I had no case.

I. On June 13, 1990, Mr. Ma told me that he selected a Pan-African Black woman to be his Administrative Assistant, a position for which I had applied and had been interviewed.

J. Upon information and belief, my credentials are better than those of the selectee, who is now the first Black administrator at IS 70.

K. I believe I was not-selected in retaliation for objecting to discriminatory practices by filing a Human Rights complaint.

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
On the Complaint of

ELIZABETH GORDON,

Complainant,

AMENDED COMPLAINT
Case No.EM01755-03/97/88-DE

-against-

VERIFICATION

NEW YORK CITY BOARD OF EDUCATION,
INTERMEDIATE SCHOOL 70,
BEATRIZ RAMIREZ-EPSTEIN,
KENNETH FORMAN, Executive Assistant :
to the Superintendent, WILLIAM MA, PRINCIPAL

Respondents.

CITY OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

Elizabeth Gordon , being duly sworn, deposes and says: I am the Complainant herein: I have read the foregoing amended complaint and know the contents thereof; the same is true of my own knowledge, except as to the matters therein stated on information and belief, and that as to these matters: I believe them to be true.

"s/Elizabeth Gordon"
(Signature of Complainant)

Subscribed and sworn to before me this 25th day of June, 1990

"s/Carmen E. Escudero"
Notary Public

Carmen E. Escudero
Notary Public, State of New York
No. 24-1130700
Qualified in Kings County
Certificate Filed in New York County
Commission Expire April, 30. 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

-against-

THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK,

Defendant,

Notice of Motion for
Reconsideration
93 civ. 6660 (SHS)

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit or affirmation of ELIZABETH GORDON, sworn to or affirmed July 22, 1996 and upon the complaint herein, plaintiff will move this Court, Sidney H. Stein, U.S.D. J., in room 23A, United States Courthouse, Foley Square, New York, New York 10007, on the ___ day of __, 19 ___, at ____ or as soon thereafter as counsel can be heard, for an order pursuant to rule 60(b) of the Federal Rules of Civil Procedure granting the relief sought in the action by restoring my action to the Court's active docket: Assistant Principal with tenure: $100.000.00. in damages.

Dated: New York, New York
July 22, 1996

"s/Elizabeth Gordon"
Elizabeth Gordon
Plaintiff pro se
159-26 Harlem River Drive
Apt. 10H
New York, NY 10039

To: Paul A. Crotty, Corporation Counsel
of the City of New York
Attorney for Defendants
100 Church Street Room 2-300
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

-against-

THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK,

Defendant,

AFFIDAVIT / AFFIRMATION
93 civ. 6660 (SHS)

STATE OF NEW YORK)
COUNTY OF MEW YORK) ss. :

ELIZABETH GORDON, being duly sworn' deposes and says:
I, ELIZABETH GORDON, am plaintiff in the above entitled action, and respectfully move this Court to issue an order restoring Rev action to the Court's active docket and Granting the original relief sought in this actions Assistant Principal with tenure and full benefits and $100.000.00 in damages.)

The reason why I am entitled to the relief I seek is the following: The proffered reason given by defendant for its adverse employment declined, on was false' discrimination and retaliation were the real reasons. The proffered reason was unworthy of credence or post of defendant's evidence consisted of hearsay testimony that was laced with irrelevant substance. I was not adequately represented by my attorney, therefore, was not adequately prepared to articulate answers to the questions effectively. I am prepared to demonstrate by a preponderance of credible additional evidence that protected class as if it was the real reason for defendant's adverse employment decision.

WHEREFORE, I respectfully request that the court grant the within motion, as well as such other and further relief and my be just and proper.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

93 civ. 6660 (SHS)

-against-

THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK,

Defendant,

1. The Board submitted a Legal Draft dated July 13, 1990 to The New York City Commission On Human Rights. Leslie Base was included as an interviewee and not as a selectee to the position of Educational Director, even though she was in the position prior to the posting on September 10, 1987. Upon peer review, Leslie Bass was not selected by her colleagues to continue as the Educational Director. In September, 1988 she returned to the classroom.

2. It was necessary for me to submit several pieces of documents to the NYCCOHR to substantiate that Leslie Bass was a selectee and not just an interviewee that the Board maintained. She was not qualified. The testimony given regarding her "superior administrative qualifications is conjecture, because her resume does not reflect any "superior administrative qualifications" than mine. (See Exhibit 1: Letter to Ms. McGowan - dated March 29, 1992; Memo sheet from the desk of Beatrice Ramirez-Epstein; list of positions held by those listed on Beatrice Ramirez-Epetein's Memo sheet; Organization Sheets (dated 1/6/87 and 9/9/87); copy of yearbook '88, pages 2 and 3; The Board's Legal Drafts title page, and letter to teachers - dated November 5, 1987)

3. Additional administrative requirements were added to deny me the position of Educational Director. Even though Leslie Bass did not state those administrative experiences in her resume, her administrative qualifications, gained-through "Extra Curricula" activities were Superiors to mine. Prior to 1987, I did have administrative experience

within the school. The type of experience that would have qualified me for the position of Educational Director. However, I did not articulate my administrative experience effectively during testimony, because I was not prepared by my Attorney. As a result, I was at an unfair disadvantage. I omitted most of my experience within the school. More importantly, I did not articulate effectively my administrative skills in general. I am more qualified than some and as equally qualified as others. I was not selected, because the people doing the selecting discriminated against me based on my race (black) and color (black).

4. During the 1983 - 1984 school year, I was the sixth grade assembly leader. There were approximately 256 students. My responsibilities included but were not limited to seating the students by class, and maintaining discipline, and introducing the program topic.

5. From January 1980 through June 1981, as the Title I Reading Specialist, I supervised and trained paraprofessionals in techniques of effective planning and instruction. I demonstrated effective lessons to teachers as well as provided the guidelines of the program to parents and teachers. My caseload was 45 non-special education and special education students. I was involved in the Inclusion~ model since 1980. I planned cultural excursions for the students from 1980 - 1987. During the 1980 1981 school year, I was the parent advisor. I articulated with the feeder schools along with the Principal during 1983-1984; 1985-1986' and the 1986-1987 school years. I conducted pre and post assessments of the students' academic needs from 19771987 while developing individualized programs, and a prescriptive education program in the Title I Reading Program. It was my responsibility to review/select and order appropriate instructional and educational materials for my students. (See Exhibit 2)

4. I developed and implemented an effective behavioral modification program that I shared with the other teachers, especially with the teachers of my Title. I students.

5. As a member of the CSIP Committee (Comprehensive School Improvement Planning Committee), I helped formulate the educational goals and objectives for improving the quality of the school academically, and socially. (See Exhibits 3, 4 and 5)

6. During the 1983 - 1984 school year, I was a general education

homeroom teacher. My class consisted of approximately 34 students. The ability to attend to details and being a "homeroom teacher" are in the record. (See paragraph 18, page 5) (See Exhibits 6 and 7)

7. My Administrative Internship (1984 - 1985), provided a wealth of experience for me. In additional to supervising and evaluating, I also trained staff' members that consisted of teachers and school aides. The setting was a pro-school program comparable to the Board's pro-school programs. I worked very closely with the Sponsoring Board. I planned both, development conferences and a variety of other tasks. My leadership ability resulted in an improved learning environment, greater staff participation and parental involvement. The experience that I gained equated that of an Assistant Principal. I was the lunchroom monitor during the school years when I.S. 70 had a student body of 1,300 - 1,400 students. I was more than qualified to assume the role of an Educational Director. I was not selected because the people making the selections discriminated against me based on my race (black) and color (black). I was more qualified than some and as equally qualified as others who were selected. (See Exhibit 8)

8. My experience as the Administrative Support/Special Programming with the Mayor's Voluntary Action Center provided invaluable administrative experience for me in a-variety of areas. My specific responsibility involved organizing groups for visits to the Tweed Gallery Photographic Exhibits, distributing LeRoy Neiman posters and serigraphs to groups, inviting and sending invitations to groups/ organizations regarding the 20th anniversary of volunteerism. As a result of my administrative ability, approximately 700 people attended the program. I wrote a study guide for school children about the Tweed Gallery based on my research about the Tweed Gallery. I also coordinated the effort to obtain gifts from Sponsors for the volunteers. (See Exhibit 9)

9. Prior to 1987, I volunteered within the school for a noncompensatory time position as well as in subsequent years, and including the 1995 - 1996 school year under the current Principal, Mrs. Fay Pallen. I was never given any non-compensatory time positions. I am a very resourceful person. As a result, I gained administrative experience in unique and creative ways. I developed and implemented programs En my classroom that could be replicated and implemented school wide. For example, becoming the sixth grade assembly leader, representing

the Principal at PTA meetings, working on the CSIP Committee, becoming a general education homeroom teacher, conducting the Mandated Training in Decentralization of Special Education, a lunchroom monitor as well as articulated along with the Principal with feeder schools. I continued to gain as much administrative experience that was possible. As a result, I coordinated a school wide voluntary campaign to raise money for The United Negro College Fund. It was not my lack of effort, ability nor interpersonal skills that hindered my getting administrative positions. It was the result of racism and discrimination by the persons making the selections, because of the color of my race (black) and my color (black). (See Exhibits 10, 11, 12 and 13)

lO. During the summer of 1987, I organized and implemented an educational/cultural and recreational program for children residing in temporary housing (The Catherine Street Sheller). During the 1988 - 1989 school year, I was an AIDP Club reader (Attendance Improvement and Dropout Prevention). Mury Stevens named her program (Attendance Improvement Means Success) AIRS. (See Exhibit 14)

11. During the years 1986 - 1994, I probably applied to "200 or more" administrative positions. I was not selected. However, my non selection was not because I was not qualified, because I was qualified. In fact, I was more than qualified to fulfill an Assistant Principal vacancy. Racism and discrimination along with corruption hindered my progress. (See Exhibits 15, 16 and 17 and 18)

12. I was offered the testing coordinator position after the fact that I had been discriminated against. Thin position of testing coordinator is irrelevant to the discrimination that I suffered in 1987. At that time, the Board hired people who were less qualified than I and discriminated against me simply because of the color of my race and color (black). (See Exhibit 19)

13. To the best of my knowledge and belief, I was the only teacher who was inducted into "Who's Who In American Education in 1987. I was more qualified than some and as equally qualified as others who were selected to the position of Educational Director.

14. At the time that I applied for the position of Educational Director, I had a total of 10 years of experience. My experience included substitute

experience in a variety of settings, in General Education as well as in Special Education classrooms. My experience as a substitute teacher included experience as a library teacher, and experience in a bridge classroom in General Education.

15. According to the Organization Sheets for 1984 - September 1987, Sal Tricamo remained at I.S. 70 while he was the AIDP Coordinator. However, he listed the District's address on his resume. The question in my mind is "What else did Mr. Tricamo list on his resume that is not true?. (See Exhibit 20)

16. The hearsay evidence given regarding fly inability to interact with parents, students and other teachers conflicts with the credible, tangible evidence that I have. (See Exhibits 21, 22, 23, 24, 25, 26, 27, and 28)

17. During the 1984 - 1985 school year, I was observed by the Principal of the school and by my Special Education Supervisor, firs. Barbara A. Gambino. There was an obvious conflict in the evaluations because the Principal rated his observation of my lesson Unsatisfactory. On December 3, 1984, my lesson was rated Satisfactory by the Special Education Supervisor. I was not in a position to defend my teaching record because I was not aware that observation was being used. The observation produced during the bench trial was the only one I received rated Unsatisfactory in nine years prior to filing for the position of Educational Director. See Exhibit 29)

18. During the school year ending June 1985, I was late arriving to work a total of .30. minutes. A couple of times, ~ brought the discrepancy between the time clock, my watch and the clock to the attention of an Assistant Principal. He had corrected my time card previously because the time clock was fast by 2 minutes. I was informed by the Assistant Principal that the Office was aware of the time clock, and was told not to worry.

19. The "30" minutes were characterized as "excessive and "unprofessional." My explanation for being late a total of "30" minutes during the school year (40 weeks, 180 days approximately), resulted from stalled subway trains caused by inclement weather, and a time clock that was "out-of-order" I did not have control over the two. However, I allowed myself 1 1/2 hours of traveling time for a 25 minute ride. (See Exhibit 30)

I have always maintained a professional attitude. At the same time, I had accumulated 24 days in my C.A.R. Today, I have a total of 68 days. I am always at work, because I love my job and thus far, have escaped teacher "burnout."

20. I was not selected for the position of Educational Director because I was discriminated against based on my race (black) and color (black). The two being Minorities have nothing to do with the unlawful discriminatory practice against me. They discriminated against me based on my race (black) and my color (black). I was more qualified than some and equally Clarified as others who were selected by Mr. Alvarado and Mrs. Ramirez-Epstein.

21. Apparently, Mrs. Ramirez-Epstein did not read my resume because she stated that she did not know that I had published a book. (See Exhibit 31)

22. Mr. Tang was selected to be the dean of discipline prior to the concept of "Mini-Schools." His position did not equate that of an Educational Director: Nor did that of the AIDP Coordinator, Nary Stevens. According to the Chapter Chair Leader, I was the only "Minority to apply for the position of Educational Director. I was more qualified than some and equally qualified as others who were selected. I was not selected because I was discriminated against based on my race (black) and color (black).

23. Maxwell Yerger and Michelle Fratli were hired in violation of the contract. At the time of their selection, the contract was being honored by the Union, at the school. I filed grievances with the Union, and was subsequently placed on the calendar for Arbitration. Well Yerger and Michelle Fratli were friends of the people who made the selections. (See Exhibit 32)

24. Prior to applying for the position of Administrative Assistant, I was badgered by Mr. Ma. His attempt was to get me to drop my complaint. I was more qualified than Irma Straughn. I was not selected to the Administrative Assistant position because I was retaliated against by Mr. Ma for filing charges of racial discrimination. Mr. Ma testified regarding my "inability as a teacher." He forgot to include how incompetent he was as an Administrator within the school. His testimony is in conflict with the events that occurred within the school. He stated that my Impact II proposal was the "best" that he had "seen"

adding, "I have seen many." "Yours is neatly typed." "You will not have a problem winning." He also stated that he did not know that I "had so many talents." (See Exhibit 33) My program was adapted by other teachers.

25. I developed and implemented a school wide program in Career Education for Mr. Ma. I also performed other administrative tasks during Mr. Ma's tenure at I.S. 70. For example, I was in charge of the Mini-School during the Directors absence, Mr. Ma called on me to assist substitute teachers who could not control the clans. I represented Mr. Ma at the Borough President's office regarding safety issues. I was selected by Mr. Ma to be the "Liaison to the Principal." I continued to assist Mr. Ma, and he continued to request my assistance. He approached me, and asked if I would volunteer as his Administrative Assistant. To that request, I refused, because the position was not compensatory. I was not selected by Mr. Ma for the position of Administrative Assistant, because I objected to being discriminated against by filing a complaint for racial discrimination.

Mr. Ma's testimony regarding Irma Straughn' administrative ability should be dismissed. It is based on hearsay. His testimony about me should be dismissed, because it is false. (See Exhibits 34,-35, 36, 37, and 38 and 39)

26. Irma Straughn was a black, Panamanian female. She did not identify with American-born blacks or African-Americans. She referred to herself as a "Latino". Irma Straughn's ability to speak Spanish is irrelevant, because "The ability to speak Spanish" was not a selection criteria. Spanish is not the language spoken at the school. I was more qualified than Irma Straughn. I was not selected for the position of Administrative Assistant, because of discrimination and retaliation against me by Mr. Ma, based on my race (black) and color (black), because I objected to being discriminated against and filed charges of discrimination based on my race (black) and color (black). I was more qualified than Irma Straughn.

27. I have been referred to as a "sub-par, special education teacher" and as "average at best." In 1987, and today, to the best of my knowledge, I am the only teacher within I.S. 70 who has been inducted into Who's Who In American Education. I am one of only three teachers at I.S. 70 to design a program, implement the program, write a proposal for an

Impact II Developer's grant. I am the only classroom teacher who is a Licensed Assistant Principal and Licensed Principal (Permanent). I am the only teacher within I.S. 70 who possess the qualifications to apply for the position of Chancellor. I was not selected to the position of Administrative Assistant because of retaliation and discrimination. (See Exhibits 40, 41, 42, and 43)

28. Over the course of the last two years, I have been harassed by the current Principal, Fay Pallen, and other Administrators within USD 2. The District conspired against me during the 1994 - 1995 school year and again during the 1995 - 1996 school year. According to Mrs. Fink, the Deputy Superintendent, the Superintendent implemented a "new policy during the 1994 - 1995 school year." "Two Administrators were to go into all special education classes." According to firs. Fink, "Two Administrators went into the self-contained classes "only when available." Over the course of the last two years, every lesson that I have prepared and taught, was rated Unsatisfactory. The Principal will enter my classroom, remain 3 or 5 minutes, and write a three page observation report. (See Exhibit 44, 45, 46, and 47, 48)

30. The Principal, Fay Pallen makes severe administrative and procedural mistakes. She also makes mistakes in grammar, spelling and mechanics. (See Exhibits 4g 50, 51)

31. During testimony, firs. Pallen, informed the Court that parents had requested that their children not attend my Resource Room Program. I have not received anything in writing regarding that, therefore, Mrs. Pallen's statement should be removed from the record. It was without merit, and very injurious. (See Exhibit 52)

"s/Elizabeth Gordon"
ELIZABETH GORDON
159-26 Harlem River Drive
Apt. lOH
New York, New York 10039
(212) 491-6392

May 24. 1994

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

AMMENDED ANSWER
93 Civ. 6660 (MGC)

Plaintiff,

- against -

NEW YORK CITY
BOARD OF EDUCATION,

Defendant.

Defendant New York City Board of Education, by its attorney Paul A. Crotty, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully allege as follows:

1. Deny the allegations set forth in the first unnumbered paragraph on page one of the complaint, except admits that plaintiff purports to proceed as stated therein.

2. Deny the allegations set forth in paragraph "1" of the complaint, except admit that on March 28, 1988 and February 25, 1993, petitioner filed a complaint and amended complaint respectively with the New York City Commission on Human Rights and that on February 25, 1993, the New York City Commission on Human Rights issued a finding that there was probable cause to credit petitioner's allegations that defendant discriminated and retaliated against her.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "2" of the complaint, except deny that plaintiff has exhausted all of her administrative remedies.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff has filed a complaint with the New York City Commission on Human Rights.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the complaint, except admit that plaintiff is a black female who has been working for defendant for approximately sixteen years.

6. Deny the allegations set forth in paragraph "6" of the complaint.

7. Deny the allegations set forth in paragraph "7" of the complaint.

8. Deny the allegations set forth in paragraph "8" of the complaint, except admit that in or about September 1977, plaintiff was appointed as a public school teacher by defendant.

9. Deny the allegations set forth in paragraph "8" of the complaint, except
admit that the petitioner has been working as a teacher at I.S. 70 since 1987.

10. Deny the allegations set forth in paragraph "9" of the complaint.

11. Admit the allegations set forth in paragraph "10" of the complaint.

12. Admit the allegations set forth in paragraph "11" of the complaint.

13. Deny the allegations set forth in paragraph "12" of the complaint, except admit that plaintiff was not appointed to any of the four Educational Director positions.

14. Deny the allegations set forth in paragraph "13" of the complaint.

15. Deny the allegations set forth in paragraph "14" of the complaint.

16. Deny the allegations set forth in paragraph "15" of the complaint.

17. In response to paragraph "16" of the complaint, defendant repeats and realleges its response to paragraph "1" through "15" of the complaint.

18. Admit the allegations set forth in paragraph "17" of the complaint.

19. Deny the allegations set forth in paragraph "18" of the complaint.

20. Deny the allegations set forth in paragraph "19" of the complaint.

21. Deny the allegations set forth in paragraph "20" of the complaint.

22. Deny the allegations set forth in paragraph "21" of the complaint.

23. Deny the allegations set forth in paragraph "22" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint.

25. In response to paragraph "24" of the complaint, defendant repeats and realleges its response to paragraph "1" through "23" of the complaint.

26. Deny knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the complaint.

27. Deny the allegations set forth in paragraph "26" of the complaint.

28. Deny the allegations set forth in paragraph "27" of the complaint.

AS AND FOR A FIRST DEFENSE DEFENDANT RESPECTFULLY ALLEGES:

29. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE DEFENDANT RESPECTFULLY ALLEGES:

30. Plaintiff has failed to comply with the conditions precedent for the commencing a Title VII Action.

AS AND FOR A THIRD DEFENSE DEFENDANT RESPECTFULLY ALLEGES:

31. Plaintiff claims are barred at least in part by the applicable statute of limitations.

WHEREFORE, defendant requests judgment dismissing the complaint, denying in its entirety all relief requested therein, together with such order and further relief as the Court deems just and proper.

Dated: New York, New York
May 24, 1994

PAUL A. CROTTY
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street, Room 6C6
New York, New York 10007
(212) 788-0861

By: "s/Todd Bromberg"
TODD BROMBERG (TB-8212)
Assistant Corporation Counsel

PAUL MARKS,
TODD BROMBERG
of Counsel.

93 Civ. 6660 (MGC)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

- against -

NEW YORK CITY BOARD OF EDUCATION,

Defendant.

AMENDED ANSWER

PAUL A. CROTTY
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, N.Y. 10007

Of Counsel: T. Bromberg,
Tel: (212) 788-0861
NYCLIS No.

Due and timely service is hereby admitted.

New York, N.Y. . . . . . , *199* . . .

. . . . . *Esq.*

Attorney for . . . . . .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

- against -

NEW YORK CITY
BOARD OF EDUCATION,

Defendant.

PRETRIAL ORDER
93 Civ. 6660 (SHS)

SIDNEY H. STIEN, District Judge

The parties having conferred among themselves and the Court pursuant to Fed. R. Civ. P. 16 not therefore the following statement, directions and agreements are adopted as the Pretrial Order herein:

1. NATURE OF THE CASE

Plaintiff Elizabeth Gordon, an African-American female is a teacher for the Board of Education of the City School District of New York (the "Board"). She teaches special education at Intermediate School No. 70 ("I.S. 70"). In 1987, several individuals were selected as "Educational Directors at I.S. 70. Ms. Gordon, who applied for the position was snot selected. Ms. Gordon maintains that she did not receive one of the positions because she is African-American, and that the decision to give the positions to other candidates violated Title VII of the Civil Rights Acts of 1964. The Board maintains that Ms. Gordon did not receive the position because she was not qualified for it. Moreover, the Board maintains that even if she had been qualified, those who received the positions were far more qualified than she.

More than three years later, an "Administrative Assistant" position, for which Ms. Gordon applied, was given to a Black female teacher named Irma Straughan. Ms. Gordon maintains that she was not given the position in retaliation for her having filed a complaint

with the City Commission on Human Rights concerning the Educational Director positions. According to Ms. Gordon, such retaliation constitutes a violation of Title VII. The Board maintains that Ms. Straughan was far more qualified for the position than Ms. Gordon and that retaliation played no role in the decision to give the position to Ms. Straughan.

2. JURISDICTION/VENUE

This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended. Jurisdiction is conferred upon this Court by 42 U.S.C. § 2000e-5 and 28 U.S.C. §§ 1331, 1343.

3. JURY/NON-JURY

The incidents that are subject of this Title VII suit took place prior to the November 1991 amendments to Title VII. Therefore, this is a non-jury trial.

4. STIPULATED FACTS

The parties reserve their right to object to the relevance of the following stipulated facts.

1. In the summer of 1987, the leadership of Community School District under 2 (the "District"), decided, after consulting with parents, teachers and administrators in the District to reorganize I.S.70 by dividing it into four "mini-schools," each having an "Educational Director."

2. The Educational Directors were to act as supervisors responsible for the day to day operation of the mini-schools. Accordingly, the positions involved substantial administrative duties and required individuals with strong leadership abilities. Although the Educational Director positions involved significant increases in responsibility for the teachers who received them, the positions did not entail increased salaries.

3. The positions were given initially to Leslie Bass, Sal Tricamo, Ed Levine and Sandra Yark. Shortly thereafter, Mr. Levine and Ms. Yark departed and were replaced by Max Yerger and Michelle Fratti.

4. Plaintiff applied and was interviewed for the position of Educational Director. She was not given the position. The six individuals who received the positions were white. Ms. Gordon was the only African-American candidate for the positions.

5. Ms. Gordon maintains that she was not given the positions

because she Is African-American.

6. The Board maintains that Ms. Gordon was not given the position because she was not qualified for it, and; even if she had been qualified, the recipients of the positions were far more qualified than she.

7. Shortly after the positions were filled, Ms. Gordon filed a complaint with the New York City Commission on Human Rights concerning the filling of these positions.

8. About three years later, William Ma, the Principal of I.S.70, filled an "Administrative Assistant" position. The position, which did not involve an increase in salary, involved the handling of a variety of administrative matters necessary to run the school.

9. Ms. Gordon applied for the position, as did a Black female Panamanian teacher named Irma Stranghan.

10. Mr. Ma gave the position to Ms. Straughan.

11. Ms. Gordon maintains that the position was given to Ms. Straughan and not her in retaliation for her having filed a complaint in which she alleged discrimination. The Board maintains that Ms. Straughan was given the position because she was far more qualified than Ms. Gordon

5. PLAINTIFF'S CONTENTIONS OF FACT

Plaintiff contends that she is an African-American school teacher with the New York City Board of Education. That on or about September 1987 she applied for a newly created position at I.S. 70. The position being that of an Educational Director. That she was more than qualified for the position. Further that she was more than qualified or equally qualified as all the other applicants for the same position who were white.

That defendant refused to appoint plaintiff to the position of Educational Director and selected four white individuals for the position even though she was better qualified than the appointed. Plaintiff further contends that the failure to appoint her to the position of Educational Director was racially motivated because she is black and was a direct violation of Title VII, 42 U.S.C. Section 2000(e).

Further, plaintiff contends that defendants retaliated against her in 1990 for filing a complaint against them in failing to appoint her to an administrative assistant position in which she was more than qualified.

6. DEFENDANT'S CONTENTIONS OF FACT

Defendant contends that plaintiff is a poor teacher, who has little, if any, administrative experience, and who has never demonstrated the leadership qualities necessary to hold a supervisory position at a school. The credentials that she has are "paper credentials" — advanced degrees which do not, by themselves, qualify her for a supervisory position.

Defendants contend that Ms. Gordon was not selected for the position of Educational Director because the candidates who received the positions were far superior to her — both in terms of administrative experience and leadership qualities.

Defendants contend that Ms. Gordon was not selected for the position of Administrative Assistant because Irma Straughan — who eventually became the interim principal of I.S.70 — was a far more experienced and qualified candidate.

7. ISSUES OF LAW

a) Whether the Board offered positions at I.S.70 in 1987 to individuals Other than plaintiff because plaintiff is African-American.

b) Whether William Ma offered the position of Administrative Assistant in 1990 to Irma Straughan instead of plaintiff in retaliation for plaintiffs filing a complaint in which she alleged that she was a Victim of discrimination.

c) Whether plaintiff is entitled to back pay if she succeeds on one or both of her claims.

d) Whether plaintiff is entitled to injunctive relief if she succeeds on one or both of her claims.

8. PREVIOUS SUBSTANTIVE MOTIONS

None.

9. WITNESSES - FOR PLAINTIFF

(1) Elizabeth Gordon.

WITNESSES - FOR DEFENDANT

(a) Sea Ramirez-Epstein — Ms. Epstein, who was involved in the selection process for the Educational Director positions, will explain

the reasons for her selections.

(b) William Ma — Mr. Ma, who was the Principal of I.S. 70 in 1990, will explain why he offered the position of Administrative Assistant to Irma Straughan instead of plaintiff.

(c) Anthony Alvarado — Mr. Alvarado, the current Superintendent of Community School District No. 2, will testify about the decision to divide I.S.70 into m~mini-schools; the selection process that he used in choosing individuals to fill the Educational Director ~positions; the process by which Assistant Principals are chosen; the standards by which teachers are evaluated; the methods by which teachers are evaluated; the leadership at I.S.70; and other matters involving the operation and functioning of I.S. 70 over the course of the last nine years.

(d) Fay Pallen — Ms. Pallen will testify about Ms. Gordon's current performance at I.S.70 and Ms. Gordon's leadership ability.

(e) Elaine Fink — Ms. Fink, Deputy Superintendent for Special Education, will testify about Ms. Gordon's performance as a Special Education teacher.

10. **EXPERTS - PLAINTIFF**

Plaintiff does not expect to offer expert testimony.

EXPERTS - DEFENDANT

Defendant does not expect to offer expert testimony.

11. **EXHIBITS - PLAINTIFFS**

1. Position available — Sept. 1987
2. Plaintiff Application letter — Sept. 1987
3. Notification Non Selection — Nov. 1987
4. Letter to Beatrice Ramirez-Epstein regarding not receiving position
5. Notification that grievance denied from Beatrice Ramirez-Epstein.
6. Gordon's letter to Superintendent Alvarado, Step #2.
7. Agreement between Board of Education, United Federation of Teachers,
Page 38; Paragraph C(1), (2), (3), and (4).
8. Letter denying grievance Dec. 2, 1987.

9. Request to Chancellor Dec. 28, 1987.
10. Decision denying Step #3 Grievance — Jan 22, 1996.
11. Organization sheet from 9/22/80.
12. Complaint filed with City of New York Human Rights Office 3/28/88.
13. Amended complaint with New York City Commission.
14. Resume Sal Tracamo.
15. Resume Edward Levine.
16. Resume Leslie Bass.
17. Resume Maxwell Yerger Jr.
18. Resume Elizabeth Gordon.
19. Resume Michelle Fratti.
20. 1985 Letter Regarding
21. Annual review form 1981 1991.
22. Degree from Hunter College 1985 — Educational Supervision and Administration.
23. Master Degree in Education — 1983.
24. Master Degree in Special Education — 1980
25. Licensed Assistant Principal 1986.
26. Certificate of qualification, School Administrator/ Supervisor 1985.
27. Letter from Hunter College and Mrs. Peterson comments - April 26, 1985.
28. Letter of recommendation from Barbara Gambino — 1987.

EXHIBITS - DEFENDANT:

A. Observation Report dated 4/6/94, from Carol Vince, with rebuttal attached.

B. Observation Report dated 12/19/94, from Della Suarez and Fay Pallen, with rebuttal attached.

C. Letter to Ms. Gordon from Fay Pallen, dated January 30, 1995, with rebuttal attached.

D. Observation Report dated 311/95, with rebuttal attached.

E. Letter to Ms. Gordon from Elaine Fink, dated April 3, 1995, with rebuttal attached.

F. Observation Report dated 5119195, with rebuttal attached.

G. Performance Evaluation of Ms. Gordon, 1995.

H. Letter to Ms. Gordon dated 12/19/95, with rebuttal

attached.

I. Letter to Ms. Gordon dated 1/17/96, with rebuttal attached.

J. Letter to Ms. Gordon, from Fay Pallen, dated February 18, 1996.

K. Letter to Ms. Gordon, from Fay Pallen, dated March 1, 1996.

L. Letter to Ms. Gordon, from Fay Pallen, dated February 8, 1996, with rebuttal attached.

M. Lesson Observation Report, dated April 3, 1985.

N. Letters to Ms. Gordon from Stanley Witty concerning lateness.

O. Letter to Ms. Gordon, from Stanley Witty, dated March 27, 1985.

P. Observation Report, dated 3/5/96

Q. Chancellors Regulation C-30.

R. September 9, 1987 job posting for Educational Director.

S. Posting for Administrative Assistant position.

T. Gordon's application for Educational Director with resume.

U. Resume of Michelle Fratti.

V. Resume of Max Verger.

W. Resume of Leslie lass.

X. Resume of Sal Tricoma.

Y. Resume of Ed Levine.

Z. Resume of Irma Straughan-

AA. Letters to President Clinton from Ms. Gordon s Resource Room.

BB. Denial of Grievance, so-ordered by the Chancellor.

CC. Gordon's second resume.

DD. Defendant's Answer.

12. PRECLUSION

Witnesses or exhibits not listed in accordance with the terms of the Pretrial Order shall be precluded at trial.

13. REQUESTED EVIDENTIARY RULINGS

1. Plaintiff requests the court to preclude the defendant &am questioning the plaintiff regarding any performance evaluation after the year 1991.

2. Plaintiff requests the court to preclude any testimony from witnesses after the year 1991. The defendant is seeking to introduce evidence concerning the performance of the plaintiff for the year 1995 and 1996.

3. Defendant requests that the Court preclude plaintiff from questioning witnesses concerning plaintiff's allegation that the District violated the teachers' union contract in their selection of Educational Directors. Plaintiff grieved this alleged violation and her grievance was denied at three different levels. Plaintiff did not take the grievance to arbitration, nor did she file a state court Article 78 proceeding concerning this alleged violation. Accordingly, she should not be permitted to now litigate a matter which was unsuccessfully grieved and not challenged in an Article 78 proceeding.

14. RELIEF SOUGHT

Plaintiff seeks the following relief:

1. Finding that plaintiff was discriminated against based upon her race as an African American in violation of 42 U.S.C. 2000 (e).

2. That court in its discretion award plaintiff the position of Principal, Assistant Principal.

3. That money damages be awarded in the amount of One Hundred Thousand ($100,000) Dollars.

15. TRIAL COUNSEL

For Plaintiff	Eugene Bogan, Esq. 1650 Broadway, Suite 609 New York, NY 10019
For Defendants	Guy Cohen, Esq. Amy Adelman, Esq. Assistant Corporation Counsel

New York City Law Department
100 Church Street
New York, NY 10007
(212) 788-1328
(212) 788-1140
Fax — (212) 788-9776

16. ESTIMATE OF TRIAL TIME

Two days.

17. TRIAL DATE

June 24, 1996.

18. REQUESTS FOR INSTRUCTIONS

Bench trial. Inapplicable.

19. MARKED PLEADINGS

Marked pleadings conforming to Rule 21 of the Civil Rules of the Southern
District shall be filed at leást one (1) day prior to trial.

20. DEPOSITION TESTIMONY

Counsel should make every effort to minimize the use of deposition testimony and to use only those portions of depositions which are essential to the cases. Marked or redacted copies of all depositions must be submitted for the Court's review at least one week prior to trial.

21. MISCELLANEOUS

None.

22. MODIFICATIONS

The Court may in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto upon application of counsel for either party, made in good faith, or upon the motion of

the Court, modify this Pre-Trial Order upon such conditions as the Court may deem just and proper.

Dated: New York, New York
June 21, 1996

SO ORDERED:

SIDNEY H. STEIN
United States District Judge

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(GC2353)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

-against-

PLAINTIFF'S
PROPOSED FINDINGS OF
FACT AND
CONCLUSIONS OF LAW
93 C.V.. 6660 (SHS)

THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK

Defendants.

PLAINTIFF'S PROPOSED FINDINGS OF FACT

1. In 1977 the Plaintiff began her employment with THE NEW YORK CITY BOARD OF EDUCATION. She was first hired as a per diem substitute teacher and upgraded to a regular substitute teacher. In September 1981, she received a teaching assignment at I.S. 70 as a resource teacher. Her specialized field was Special Education.

2. When Plaintiff arrived at I.S. 70 in 1981 the demographics were approximately sixty percent (60%) White with balance be comprised of Blacks, Hispanics and Asian.

3. Plaintiff after graduating with a Bachelor of Science in Education, continued her education, whereby in 1983 completed a program at Hunter College where she received a certificate in School Administration and Supervision.

4. During the period of time she attended Hunter College she was assigned to a community project entitled "The West Side Community Alliance" under the supervision of Mrs. Mary Peterson. MS. GORDON successfully completed the program with an exceptional recommendation.

5. That in 1983, Plaintiff ELIZABETH GORDON, received a masters degree in education and in 1986 she became a licensed Assistant Principal.

6. That prior to September 1987 she had attended many school conferences and participated in many extracurricular activities giving her a wealth of experience.

7. Upon returning to her teaching position at I.S. 70 in the fall of 1987, a position for Educational Director became available. During the summer of 1987 I.S. 70 was reorganized into four Mini Schools with an overall project director who was MRS. BEATRICE RAMIREZ-EPSTEIN.

The four Mini Schools would each have a Director of Education who would be supervised by the project director.

8. On or about September 10, 1987 the new positions for four(4) Educational Directors was posted, giving Plaintiff MS. GORDON only two days in which to apply for the position.

9. At the time when the four (4) educational positions became available their existed a contract between THE BOARD OF EDUCATION and THE UNITED FEDERATION OF TEACHERS which states in substance that: *1) A list of vacancies and the qualifications for all non-teaching positions should be made available to all teachers in the school and posted in sufficient time for written application. 2) Such non-teaching assignments should be made on the basis of seniority in the school among those teachers who are equally qualified. 4) A qualified teacher who has not had a non-teaching assignment for which there is a list of applicants should have priority over any other teacher who has had an assignment.*

10. Plaintiff in relying on her education, experience and provisions of the union contract felt that she was more than qualified for the position of Educational Director which was a nonteaching assignment.

I l. In order to apply for the position of Education Director, Plaintiff was required to meet the following:

1) New York City Teaching License

2) Ability to communicate effectively

3) Ability to work and relate well to staff, students, parents and outside consultants

4) Ability to develop and maintain an effective staff development program

5) Ability to work with the project director in developing an effective school program

6) At least 5 years recent teaching experience

12 At the time when Plaintiff applied for the Educational Director position she was the only African American applying for the job, further the demographic of the school had changed to approximately ninety (90%) percent Blacks and Hispanics.

13. Plaintiff who was denied the position was equally or more qualified that the four (4) individuals (all of which were White). Further, Defendants admit that they did not consider the criteria established under the Union Contract in their selection process. This fact taken together with the Plaintiff equally qualifying experience and education is another indication of Defendants' discrimination agonist the Plaintiff because of her race.

14. Plaintiff in 1990 amended her complaint with THE NEW YORK CITY OF HUMAN RIGHTS. Plaintiff's testimony will reveal that a tremendous amount of pressure was launched upon her by the Principal, WILLIAM MA, in an attempt to force Plaintiff to discontinue her law suit against THE BOARD OF EDUCATION. A position became available for Assistant Assistant or to the principal. Although Plaintiff who applied for the position was more than qualified the position was given to a person with less qualifications than the Plaintiff:

15. A comparison of the resumes of the applicants who were selected for the position of Education Director-clearly indicates that the Plaintiff was equally qualified for the position.

16. The facts clearly demonstrate that the Plaintiff has been teaching for approximately 19 years for which she has received satisfactory evaluation for 17 years.

17. That she was licensed by the State of New York as an Assistant Principal and Principal

CONCLUSION OF LAW

1. THAT Plaintiff ELIZABETH GORDON has established a Prima Facie case of discrimination in violation Title VIII, 42 U.S.C. 2000E. That Plaintiff pursuant to McDonnell Douglas Corp. V. Green 411 U.S. 792, 802 (1973) has met her burden of proof by producing evidence which proved that:

1) She is a member of a protected group -African American
2) She applied for the position of Educational Director
3) She was qualified for the position
4) She was rejected

2. Plaintiff ELIZABETH GORDON has made a Prima Facie case of retaliation against the Defendants in presenting evidence which clearly shows that she is a member of a protect group, she applied for the position of assistant administrator, that she was more than qualified for the position. She was denied the position when she refused to discontinue her law suit against the Defendants. See William v Bernstien 663 F. 2nd 109, 116-117 (D.C. Cir 1980) Cert. denied.

Respectfully Submitted

"s/Eugene Bogan"
EUGENE BOGAN, ESQ.
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

- against -

THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK,

Defendant.

DEFENDANT'S PROPOSED FINDINGS OF CONCLUSIONS OF LAW
93 Civ. 6660 (SHS)

DEFENDANT'S PROPOSED FINDINGS OF FACT

1. In the summer of 1987, the leadership of Community School District Number 2 (the "District"), decided, after consulting with parents, teachers and administrators in the District, to reorganize Intermediate School Number 70 ("I.S.70") by dividing it into four "mini-schools," each having an "Educational Director." The four mini-schools were to be supervised by a "Project Director," the equivalent of a principal. The leadership of the District found that the reorganization was necessary to improve the school, which had been suffering from declining enrollment and a poor reputation in terms of safety and academies.

2. The Educational Directors were to act as supervisors responsible for the day to day operation of the mini-schools. Each Educational Director was to develop and plan, under the direction of the Project Director, a staff development plan for the mini school, which would entail workshops, one-to-one consultation with staff, conferences, demonstration lessons and other activities for teachers and parents. Accordingly, the positions involved substantial administrative duties and required individuals with strong leadership abilities. Although the

Educational Director positions involved significant increases in responsibility for the teachers who received them, the positions did not entail increased salaries. The leadership of the District sought to find teachers with strong leadership qualities, strong administrative abilities, and the support of peers and parents in the District.

3. The positions were given initially, on an interim basis, to Leslie Bass, Sal Tricamo, Ed Levine and Sandra Yark. Shortly thereafter, Mr. Levine and Ms. Yark departed and were replaced by Max Yerger and Michelle Fratti (Ms. Yark had never intended to remain in the position past the beginning of the school year). All of these candidates had broad global teaching experience, significant administrative experience, and stepped forward as potentially
strong leaders for the reorganized school. All of these candidates were far more qualified than plaintiff — a sub-par special education teacher, with little administrative experience and no record of leadership ability.

4. In 1987, Sal Tricamo had worked for the Board for seventeen years, fourteen of which he had spent as a teacher at I.S.70. Accordingly, he had more seniority than plaintiff, who had been a teacher since 1977, and a non-substitute teacher since 1981. From 1976 to 1984, he had been I.S.70's Administrative Assistant, meaning he handled a significant portion of the day to day matters necessary to the functioning of the school. From 1984 to 1987, he had served as the District Coordinator of the Attendance Improvement and Drop Out Prevention Program ("AIDP") for the District. Both of these positions provided Mr. Tricamo with a great deal of administrative and staff development experience, making him an ideal candidate for the position. Equally important, he stepped forward during the planning stages of the new project and expressed a desire to run a mini-school and he had the unreserved support of parents, teachers and administrators within the District.

5. Leslie Bass also stepped forward prior to the beginning of the school year as a potential leader. In the summer of 1987, several meetings were held among staff, parents, and representatives of the District to decide upon the school's future. Ms. Bass was outspoken and demonstrated a profound desire to take whatever steps were necessary to alter the course of the school in terms of safety and academics. She had significant experience in staff development, which entailed designing workshops and curricula for staff. She had significant administrative experience from working in the AIDP program and coordinating the school's newspaper. Her experience as a teacher involved the handling of large groups of students? Unlike plaintiff, who has never taught a class with more than eight students. Ms. Bass had worked as a teacher for the

Board since 1965. She was well-liked and respected by staff, parents and students.

6. Edward Levine had been a teacher with the Board for sixteen years at the time he was chosen as an Educational Director. He had also been a college instructor and had significant administrative and staff development expertise from having worked as the Coordinator for Staff Development, Impact II Program, for the Central Board of Education. His experience as a teacher and as staff developer made him an excellent candidate for the position. After his initial selection, it was found that he did not interact well with staff and lacked the proper temperament to succeed under the difficult circumstances the school faced. As a result, he was transferred to the District office during the first month of the school year.

7. Michelle Fratti, who is now a Principal in Queens, was perhaps the strongest candidate in terms of her administrative credentials and capacity. She could well have been chosen as the Project Director. In addition to being a teacher for fifteen years at the time of her selection, she had extremely broad administrative experience. She had designed staff development workshops; she had organized and implemented "Gifted and Talented" programs; she had served as Administrative Assistant — a comparable position — at I.S. 137 in the Bronx. Her resume, which will be offered into evidence, is replete with the type of varied school experience that administrators need.

8. In 1987, Maxwell Yerger had twenty five years of experience in the field of education. His global experience included teaching at various levels including college, developing staff development programs and curricula, acting as an educational consultant, and other varied experience. He had developed reading programs for schools in Louisiana, Mississippi and Alabama. His leadership in the area of developing programs was seen as a powerful asset for a newly developed school structure.

9. Plaintiff applied and was interviewed by Beatrice Ramirez-Epstein, the Project Director, for the position of Educational Director. She was not given the position because she lacked administrative and supervisory experience, and did not have a reputation among parents and peers as a quality teacher who could interact well with parents, students and other teachers, particularly in a leadership role. Indeed, plaintiff's reputation among parents and staff has been consistently poor over the course of her years at I.S.70.

10. Race played no role in the decision to offer the positions to candidates other than plaintiff. Indeed, the principal decision makers, Anthony

Alvarado and Beatrice Ramirez-Epstein -both of whom are Hispanic — have spent large portions of their careers working to improve educational opportunities for minority students.

11. Moreover, minorities made up three-sevenths, or nearly fifty-percent, of I.S.70's leadership after the appointments. The four Educational Directors were white; the Project Director (Beatrice Ramirez-Epstein) was Hispanic; the Dean of Students was African-American (Mr. Lang); and the Dropout Prevention Coordinator was African-American (Ms. Stevens). In addition, of the next three Principals of the school, one was an Asian man (William Ma), one an Asian woman (Ms. Chin), and the third an African American woman (Irma Straughan). And, several minority teachers became Educational Directors in subsequent years, including Mr. Lang.

12. Notably, in the three years following the initial appointments of Educational Directors, selections for the Educational Director positions were made by the teachers themselves. Ms. Gordon applied for the position during one year and received just one faculty vote. Her peers shared the view that she should not be an administrator.

13. Ms. Gordon was the only African-American applicant for the Educational Director positions when they were originally filled. Although Ms. Gordon maintains that she was not given the position because she is African-American, she has not shown that race played any role in the decision. She has offered no direct evidence to show discrimination: no statements or comments showing a discriminatory motive. She has offered no statistical evidence to support her claim. She has offered no credible evidence that her qualifications even approach those of the selected candidates. She has not shown that she has the ability to play a leadership role in a school setting.

14. Shortly after the positions were filled, Ms. Gordon filed a complaint with the New York City Commission on Human Rights concerning the filling of these positions.

15. More than three years later, William Ma, the Principal of I.S.70, filled an "Administrative Assistant" position. The position, which did not involve an increase in salary, involved the handling of a variety of administrative matters necessary to run the school. Ms. Gordon applied for the position, as did a Black Panamanian female teacher named Irma Straughan. Ms. Straughan was known as a well-organized, meticulous, respected teacher at I.S.70. Ms. Straughan had many more years experience as a teacher than plaintiff, she had administrative experience as a bilingual program coordinator, and she was bilingual, a useful ability in a school that was 30% Hispanic time. Mr. Ma believed she

would be — and she was — an important role model for both African American and Hispanic students at the school. Mr. Ma chose Ms. Straughan for the position. After Mr. Ma's departure, Ms. Straughan served effectively as Interim Acting Principal prior to her untimely death in 1993.

16. Although Ms. Gordon maintains that the position was given to Ms. Straughan and not her in retaliation for her having filed a complaint in which she alleged discrimination, the evidence shows that Ms. Straughan was given the position solely because she was far more qualified than Ms. Gordon. Moreover, Mr. Ma had no interest one way or another in the outcome of Ms. Gordon's complaint. It was filed prior to his arrival at I.S.70 and had nothing to do with him. It played no role in any decision that he made. And although Mr. Ma never had to determine whether Ms. Gordon was qualified for the position — since Ms. Straughan was clearly more qualified — his view of Ms. Gordon as a teacher was that she was, at best, an average teacher.

17. Finally, plaintiff has requested that the Court order her appointed to a supervisory position at the Board. To that extent, her current performance is relevant to the Court's ultimate decision. As demonstrated by the testimony of Fay Palien, the current Principal of I.S. 70, plaintiff is not only unfit to be a supervisor in a school setting, she is also an unsatisfactory teacher. The last two years, she has received "Unsatisfactory" yearly evaluations. She appears unable to properly instruct her special education students, who are greatly in need of individualized instruction. She will] likely be brought up on departmental charges concerning.

FACSIMILE
COVER SHEET

Eugene Bogan, Esq.
1650 Broadway, Suite 609
New York, New York 10019
Office# (2 12) 713-0140
Fax # (2 12) 7 1 3-0 1 84

Attn.: Guy Cohen

Date: June 20, 1996

# of Pages to Follow: 3

Fax#: (212) 788-9776

Comments: Please find my inclusion for the joint - pretrial order

11. EXHIBITS- Plaintiffs

1. Position Available - Sept. 1987
2. Plaintiff Application letter - Sept. 1987
3. Notification Non Selection - Nov. 1987
4. Letter to Beatrice Ramirez - Epstein regaining not receiving position
5. Notification that grievance denied from Beatrice Ramirez - Epstein
6. Gordon's letter to Superintendent Anthony Alvardo. Step #2.
7. Agreement between Board of Education, United Federation of Teachers, Page 38; Paragraph C (1), (2), (3), and (4).
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9. Request to Chancellor Dec. 28, 1987
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Grievance -Jan 22, 1996
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18. Resume Elizabeth Gordan
19. Resume Michelle Fratti
20. 1985 Letter Regarding
21. Annual review form 1981- 1991
22. Degree From Hunter College 1985 - Educational Supervision and administration
23. Master Degree in Education - 1983
24. Master Degree in Special Education - 1988
25. Licensed Assistant Principle 1986
26. Certificate of qualification, School Administrator/Supervisor 1985
27. Letter from Hunter College and Mrs. Peterson comments - April 26, 1985
28. Letter of recommendation from Barbara Gambino - 1987

5. Plaintiff Contentions of the facts

Plaintiff contend that she is an African - American school teacher

with The New York City Board of Education. That on or about September 1987 she applied for a newly created position at I. S. 70. The position being that of an Educational Director. That she was more than qualified for the position. Further that she was more than qualified or equally qualified as all the other applicants for the same position who were white.

That defendant refuse to appoint plaintiff to the position of Educational Director and selected four white individuals for the position- even though she was better qualified than the appointed. Plaintiff further contend that the failure to appoint her to the position of Educational Director was racially motivated because she is black and was a direct violation of title VII42 U.S. C. Section 2000 (e).

Further Plaintiff contend that defendants retaliated against her in 1990, for filing a complaint against them in failing to appoint her to an administrative assistance position in which she was more than qualified.

9. Witness for Plaintiff

Elizabeth Gordan

13.

2. Plaintiff request the court to preclude the defendant from questioning the plaintiff regarding any performance evaluation after the year 1991.

3. Plaintiff request the court to preclude any testimony from witnesses after the year 1991. The defendant is seeking to introduce evidence concerning the performance of the plaintiff for the year 1995 and 1996.

14. Relief Sought

1. Finding that plaintiff was discriminating against based upon her race as an African- American in violation of 42 U. S. C. 2000 (e).

2. That court in its discretion award plaintiff the position of Principle Assistant principle,.

3. That money damaged be awarded in the amount of One Hundred Thousand ($100,000.00) Dollars.

9. Ms. Gordan applied for the position, as did a Black female Panamanian teacher named Irma Straughan

10. Mr. Ma gave the position to Ms. Gordon maintains that the position was given to Ms. Straughan and not her in retaliation for her having filed a compliant in which she alleged discrimination. The Board maintains that Ms. Straughan was given the position because she was far more qualified than Ms. Gordon.

5. **PLAINTIFF CONTENTIONS OF THE FACTS**

Plaintiff contend that she is an African - American school teacher with The New York City Board of Education. That on or about September 1987 she applied for a newly created position at I. S. 70. The position being that of an Educational Director. That she was more than qualified for the position. Further that she was more than qualified or equally qualified as all the other applicants for the same position who were white.

That defendant refuse to appoint plaintiff to the position of Educational Director and selected four white individuals for the position- even though she was better qualified than the appointed. Plaintiff further contend that the failure to appoint her to the position of Educational Director was racially motivated because she is black and was a direct violation of title VII42 U.S. C. Section 2000 (e).

Further Plaintiff contend that defendants retaliated against her in 1990, for filing a complaint against them in failing to appoint her to an administrative assistance position in which she was more than qualified.

6. **DEFENDANTS ' CONTENTIONS FACT**

Defendants contend that plaintiff is a poor teacher, who has little, if any, administrative experience, and who has never demonstrated the leadership qualities necessary to hold a supervisory position at a school. The credentials that she has are "paper credentials" — advanced degrees which do not, by themselves, qualify her for a supervisory position.

Defendants contend that Ms. Gordon was not selected for the position of Educational Director because the candidates who received the positions were far superior to her — both in terms of administrative experience and leadership qualities.

Defendants contend that Ms. Gordon was not selected for the position of Administrative Assistant because Irma Straughan— who eventually became the interim principal of I. S > 70 — was a far more experienced and qualified candidate.

7. **ISSUES OF LAW**

a) whether the Board offered positions at I. S. 70 in 1987 to individuals other than plaintiff because is African-American.

b) whether William Ma offered the position of Administrative Assistant in 1990 to Irma Straughan instead of plaintiff in retaliation far plaintiff 's filing a complaint to which she alleged that she was a victim of discrimination.

c) Whether plaintiff is entitled to back pay if she succeeds on one or both her claims.

d) Whether plaintiff is entitled to injunctive relief if she succeeds on one or both of her claims.

8. **PREVIOUS SUBSTANTIVE MOTIONS**
None

9. **WITNESS- FOR PLAINTIFF**

a) Witness for Plaintiff
Elizabeth Gordan

WITNESS- FOR DEFENDANTS

a) Beatrice Remarries- Epstein— Ms. Epstein, who was involved in the selected process for the Educational Director position, will explain the reasons for her selection.

b) William Ma — Mr. Ma, who was the Principal of I. S. 70 in 1990 will explain why he offered the position of Administrative Assistant to Irma Straughan instead of plaintiff.

c) Anthony Alvardo — Mr. Alvardo, the current Superintendent of Community School District No. 2 will testify about the decision to divide I. S. 70 into three schools; the selection process that he used

choosing individuals to fill the Educational Director position; the process by which Assistant Principals are chosen; the standards by which teachers are evaluated; the methods by which teachers are evaluate; the leadership at I. S. 70 and other matters involving the operation and functioning of I. S. 70 over the course of the last nine years.

d) Fay Palled — Ms. Palled will testify about Ms. Gordon's current performance at I. S. 70 and Ms. Gordon's leadership ability.

e) Elaine Fink—Ms. Fink, Deputy Superintendent for Special Education, will testify about Ms. Gordon's performance as a Special Education teacher.

10. EXPERTS- PLAINTIFF

EXPERTS DEFENDANTS:

Defendants do not expect to offer expert testimony.

11. EXHIBITS- PLAINTIFFS

1. Position Available - Sept. 1987
2. Plaintiff Application letter - Sept. 1987
3. Notification Non Selection - Nov. 1987
4. Letter to Beatrice Ramirez - Epstein regaining not receiving position
5. Notification that grievance denied from Beatrice Ramirez- Epstein
6. Gordon's letter to Superintendent Anthony Alvardo. Step #2.
7. Agreement between Board of Education, United Federation of Teachers, Page 38; Paragraph C (1), (2), (3), and (4).
8. Letter denying grievance Dec. 2, 1987.
9. Request to Chancellor Dec. 28, 1987
10. Decision denying Step #3
Grievance - Jan 22, 1996
11. Organization sheet from 9/22/80
12. Compliant filed City of New York Human Rights Office 3/28/88
13. Amended complaint with New York City commission on Human Rights.
14. Resume Sal Tricoma
15. Resume Edward Levine
16. Resume Leslie Bass
17. Resume Maxwell Verger Jr.
18. Resume Elizabeth Gordon
19. Resume Michelle Fratti

20. 1985 Letter Regarding
21. Annual review form 1981- 1991
22. Degree From Hunter College 1985 - Educational Supervision and administration
23. Master Degree in Education - 1983
24. Master Degree in Special Education - 1988
25. Licensed Assistant Principle 1986
26. Certificate of qualification, School Administrator/Supervisor 1985
27. Letter from Hunter College and Mrs. Peterson comments - April 26, 1985
28. Letter of recommendation from Barbara Gambino - 1987

EXHIBITS DEFENDANTS

A. Observation report dated 4116194, from Carol Vince, with rebuttal attached.
B. Observation report dated 12/19/94, form Della Suarez and Fay Palled, with rebuttal attached.
C. Letter to Ms. Gordon from Fay Palled, dated January 30, 1995, with rebuttal attached.
D. Observation report dated 3/1/95, with rebuttal attached.
E. Letter to Ms. Gordon from Elaine Fink, dated April 3, 1995, with rebuttal attached.
F. Observation report dated 5/19/95.
G. Performance Evaluation of Ms. Gordon, 1995.
H. Letter to Ms. Gordon dated 12/19/95, with rebuttal attached.
I. Letter to Ms. Gordon dated 1/17/96, with rebuttal attached.
J. Letter to Ms. Gordon, from Fay Palled, dated February 18, 1996.
K. Letter to Ms. Gordon, from Fay Palled, dated March 1, 1996 .
L. Letter to Ms. Gordon, from Fay Palled, dated February 8, 1998 with rebuttal attached.
M. Lesson Observation report, dated April 3, 1985.
N. Letter to Ms. Gordon, from Stanley Witty concerning lateness.
O. Letter to Ms. Gordon, form Stanley Witty, dated March 27, 1985.
P. Observation report, dated 315196.
Q. Chancellors regulation C-30.
R. September 9, 1987 job posting for Educational Director.
S. Posting for Administrative Assistant position.
T. Gordon's application for Educational Director with resume.
U. Resume of Michelle Fratti.
V. Resume of Max Verger.

W. Resume of Leslie Bass.
X. Resume of Sal Tricoma.
Y. Resume of Ed Levine.
Z. Resume of Irma Straughan.
AA. Letters to President Clinton from Ms. Gordon's Resource Room.
BB. Denial of Grievance, so ordered by the Chancellor.
CC. Gordon's second resume.
DD. Defendant's Answer.

12. Preclusion

Witness or exhibits not listed in accordance with the terms of the Pretrial Order shall be precluded at trial.

13. Requested Evidentiary Rulings

2. Plaintiff request the court to preclude the defendant from questioning the plaintiff regarding any performance evaluation after the year 1991.

3. Plaintiff request the court to preclude any testimony from witnesses after the year 1991. The defendant is seeking to introduce evidence concerning the performance of the plaintiff for the year 1995 and 1996.

1. Defendant requests that the Court preclude plaintiff from questioning witnesses concerning plaintiff's allegation that the District violated the teachers' union contract in their selection of Educational Directors. Plaintiff grieved this alleged violation and her grievance was denied at three different levels. Plaintiff did not take the grievance to arbitration nor did she file a state court Article 78 proceeding concerning this alleged violation. Accordingly, she should not no be permitted to now litigate a matter which unsuccessfully grieved and not challenged in an Article 78 proceeding.

14. RELIEF SOUGHT

1. Finding that plaintiff was discriminating against based upon her race as an African- American in violation of 42 U. S. C. 2000 (e).

2. That court in its discretion award plaintiff the position of Principle, or Assistant principle,.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH GORDON,

Plaintiff,

against

NOTICE OF APPEAL
93 civ. 6660 (SHS)
Docket No

THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK,

Defendants,

Notice is hereby given that ELIZABETH GORDON (party) hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment (describe it). The issues in the above entitled action having been brought on for trial before the Honorable Sidney H. Stein, United States District Judge, without a jury on June 26, 1996, and at the conclusion of the trial the Court having reserved its decision, and the Court thereafter on July 8, 1996, having rendered its Order, finding in favor of the Defendant, it is ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed accordingly the above action is removed from the Court's entered in this action on the 22 day of July, 1996. (active docket.)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

Form 1-CA/SNY-8/87

"s/Elizabeth Gordon"
ELIZABETH GORDON

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
U.S. COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007

JAMES M. PARKISON
CLERK

Date: AUG. 19, 1996

Re: Gordon v. N.Y.C. BOARD OF EDUCATION
93 Civ. 6660 (SHS)

Dear Sir or Madam:

Please be advised that this office received your notice of appeal on 7/22/96 . Your appeal will now be docketed in the District Court, forwarded to the Orders and Appeals Clerk and then transmitted to the Court of Appeals. If you have questions about this procedure, please contact this office.

Sincerely,

"s/James M. Parkison"
The Pro Se Office
(212) 637-0175

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK, NY

GEORGE LANGE III
CLERK

Re: Gordon v. Board of Ed
Docket No. 96-9011

CIVIL APPEALS SCHEDULING ORDER # 1
ADDRESS' INQUIRIES TO (212) 791-1107/1119

Noting that-Elizabeth Gordon appellant pro se, has filed a Notice of Appeal, and being advised as to the progress of the appeal.

Further noting that the record on appeal has been filed.

IT IS FURTHER ORDERED that the appellant's brief and appendix be filed on or before October 11. 1996 . If appellant's brief does not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that the appellee's brief be filed on or before November 11, 1996 . If appellee's brief does not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that 10 copies of each brief or memorandum shall be filed with the Clerk; however, the filing of a lesser number may be permitted upon application.

IT IS FURTHER ORDERED the appellee may, without further order of the court, file 10 Copies of an appendix to its brief, or 10 copies of an attachment to its memorandum.

IT IS FURTHER ORDERED that the argument of the appeal shall be heard as early as the week of December 2. 1996 . The appellant pro se and opposing counsel and parties should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral

argument. The time and place of oral argument shall be separately noticed by the Clerk to the appellant, pro se, and all counsel.

IT IS FURTHER ORDERED that in the event of default by appellant in timely filing the appellants brief or memorandum and appendix, or upon default by appellant regarding any other provision of this order, the appeal may be dismissed forthwith without further notice and without a motion thereof.

IT IS FURTHER ORDERED that if the appellee fails to file a brief or memorandum within thy time directed by this order, the appellee shall be subject to such sanctions as the court may deem appropriate.

"s/George Lange II, Clerk"
GEORGE LANGE II, Clerk

Case Manager, USCA

cvprsoroa -frm

7. Deny the allegations set forth in paragraph "7" of the complaint.

8. Deny the allegations set forth in paragraph "8" of the

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 96-9011 Filed: 8/16/96
Nsuit: 3440 CIVIL RIGHTS-Other
Gordon v. Board of Ed
Appeal from: U.S. District Court SDNY

Case type information:
1) Civil
2) Private
3) none

Lower court information:

District: 0208-01: 93-cv-6660
Trial Judge: Sidney H. Stein
Date Filed: 9/23/93
Date order/judgment: 7/10/96
Date NOA filed: 8/7/96

Fee status: paid

Prior cases:
None

Current cases:
None

Panel Assignment:

Proceedings include all events. 96-9011 Gordon v. Board of Ed

ELIZABETH GORDON Plaintiff - Appellant	Elizabeth Gordon 212-491-6392 Apt. 10H [COR LD NTC] 59-26 Harlem River Dr. New York, NY 10039
BOARD OF EDUCATION OF THE CITY OF NEW YORK Defendant - Appellee	Todd Andrew Bromberg, ,Esq. 212 - 788 - 0861 [COR LD NTC ret] Corporation Counsel's Office City of New York 100 Church St. New York, NY 10007

Proceedings include all events.
96-9011 Gordon v. Board of Ed

Official Caption 1/

Docket No. (s): 96-9011

ELIZABETH GORDON,
Plaintiff-Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant-Appellee.

Authorized Abbreviated Caption 2/
Docket No. (s) : 96-9011
GORDON V NYC BD of ED

1/ Fed. R. App. P. Rule 12 (a) and 32 (a).
2/ For use on correspondence and motions only.

Proceedings include all events.
96-9011 Gordon v. Board of Ed

8/16/96 Note: This appeal was PRO SE when filed. (pr26)
8/16/96 Copy of district court docket entries and notice of appealon behalf of Appellant Elizabeth Gordon filed. [96-9011] (pr26)
8/16/96 Record on appeal filed. (Original papers of district court.) Number of volumes: 1 (pr26)

8/16/96 Copy of U.S. District Court Order dated July 8, 1996 FILED
(pr26)
8/16/96 Copy of district court Judgment, filed. (pr26)
8/21/96 Copy of receipt re: payment of docketing fee filed on behalf of Appellant Elizabeth Gordon receipt #: 268891. [96-9011] (ps26)
9/11/96 Scheduling order #1 filed. Appellant's brief and appendix due on 10/11/96. Appellee's brief due on 11/11/96. Argument as early as week of 12/2/96. (ps26)
9/11/96 Notice to parties of scheduling dates. (ps26)

Docket as of September 11, 1996 2:33 pm Page 4

1987.

Proceedings include all events.
96-9011 Gordon v. Board of Ed

8/16/96 Note: This appeal was PRO SE when filed. (pr26)
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9/11/96 Notice to parties of scheduling dates. (ps26)
9/17/96 Notice of Appeal Acknowledgment Letter from Elizabeth Gordon for Appellant Elizabeth Gordon received. (ps26)
10/1/96 Appellant letter dated October 1, 1996 re additional information received (ps26)
10/3/96 Copy of current docket sheet sent to Appellant Elizabeth Gordon: Noting that any requests to allow must be submitted on T1080 motion form. (ps26)

INDIV PROSE
PROPSD C61182
Q02 2

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 96-9011 Filed: 8/16/96
Nsuit: 3440 CIVIL RIGHTS-Other
Gordon v. Board of Ed
Appeal from: U.S. District Court SDNY

Case type information:
1) Civil
2) Private
3) none

Lower court information:

District: 0208-01: 93-cv-6660
Trial Judge: Sidney H. Stein
Date Filed: 9/23/93
Date order/judgment: 7/10/96
Date NOA filed: 8/7/96

Fee status: paid

Prior cases:
None
Current cases:
None
Panel Assignment:

Proceedings include all events.
96-9011 Gordon v. Board of Ed

ELIZABETH GORDON Plaintiff - Appellant	Elizabeth Gordon 212-491-6392 Apt. 1OH [COR LD NTC] 159-26 Harlem River Dr. New York, NY 10039
BOARD OF EDUCATION OF THE CITY OF NEW YORK, Defendant - Appellee	Todd Andrew Bromberg, Esq. 212-788-0861 [COR LD NTC ret] Joseph I. Lauer, Esq. 212-788-1032 - Room 6-198 [COR AD NTC ret] Corporation Counsel's Office City of New York 100 Church St. New York, NY 10007

Proceedings include all events.
96-9011 Gordon v. Board of Ed
Official Caption 1/
Docket No. (s) : 96-9011

ELIZABETH GORDON,
Plaintiff-Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant-Appellee.

Authorized Abbreviated Caption 2/
Docket No. (s) : 96-9011
GORDON V NYC BD of ED

1/ Fed. R. App. P. Rule 12 (a) and 32 (a).
2/ For use on correspondence and motions only.

Proceedings include all events.
96-9011 Gordon v. Board of Ed

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on behalf of Appellant Elizabeth Gordon filed. [96-9011] (pr26)
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(pr26)
8/16/96 Copy of district court Judgment, filed. (pr26)
8/21/96 Copy of receipt re: payment of docketing fee filed on behalf of Appellant Elizabeth Gordon receipt #: 268891. [96-9011] (ps26)
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11/96. Argument as early as week of 12/2/96. (ps26)
9/11/96 Notice to parties of scheduling dates. (ps26)
9/17/96 Notice of Appeal Acknowledgment Letter from Elizabeth Gordon for Appellant Elizabeth Gordon received. (ps26)
10/1/96 Appellant letter dated October 1, 1996 re additional information received (ps26)
10/3/96 Copy of current docket sheet sent to Appellant Elizabeth Gordon: Noting that any requests to allow must be submitted on T1080 motion form. (ps26)
10/11/96 Appellant Elizabeth Gordon motion for leave to file supplemental exhibits FILED (w/pfs). [876666-1] (ps26)
10/11/96 Appellant Elizabeth Gordon exhibits received. Number of volumes: 1. Problem: motion pending. (ps26)
10/11/96 Appellant Elizabeth Gordon brief FILED with proof of service. (see shelf 16 room 1702) (inO3) -
10/11/96 Appellant Elizabeth Gordon appendix filed w/pfs. Number of volumes: 1. (See shelf 16 room 1702) (inO3)
10/25/96 Order FILED REFERRING motion for leave to file supplemental

exhibits [876666-1] , to the panel that will hear the appeal. Order endorsed on motion dated 10/11/96 (ps26)

10/29/96 Appellant Elizabeth Gordon supporting papers filed for motion to file supplemental exhibits endorsed 10.29.96. (copies to cat.) (inO3)

Proceedings include all events.
96-9011 Gordon v. Board of Ed

11/1/96 Notice of appearance form on behalf of Joseph I. Lauer, Esq., received. (Orig. to Calendar) (ps26)
11/12/96 Appellee Board of Ed MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due. (ps26)
11/14/96 Appellant Elizabeth Gordon reply brief filed with proof of service. (ps26)
12/16/96 Appellant Elizabeth Gordon supplemental papers received. (ps26)
12/16/96 Appellant Elizabeth Gordon defective strike document filed. Notice sent to party to correct by 12/26/96. (ps26)
12/18/96 Request to strike document from the record returned to Appellant Elizabeth Gordon. (Formal T 1080 needed) (ps26)
12/23/96 Appellant Elizabeth Gordon defective strike motion cured. Satisfy defective document response due. (ps26)
12/23/96 Appellant Elizabeth Gordon motion to strike document from the record FILED (w/pfs). [910241-1] (Orig. 4 cc: Cal) (ps26)
12/27/96 Proposed for argument the week of 2/17/97. (ca96)
12/31/96 Appellee Board of Ed response to the motion to strike with proof of service filed. Sent to calendar. Case is proposed. (pr22)
1/8/97 Argument as early as week of 1/20/97. (ca91)
1/9/97 Proposed for argument the week of 3/3/97. (ca91)
1/9/97 Appellant Elizabeth Gordon defective motion to strike filed. Notice sent to party to correct by 1/13/97. (pr20)

ORIGINAL

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK

268891

RECEIVED FROM

ELIZABETH GORDON

N/A

93 CV6660 (SHS)

Fund			
6855XX	Deposit Funds	08/16/96 8:36AM 001#9393	D
604700	Registry Funds		
	General and Special Funds	#086900	$105.00
508800	Immigration Fees	CASH	$105.00
085000	Attorney Admission Fees		
086900	Filing Fees		
322340	Sale of Publications		
322350	Copy Fees		
322360	Miscellaneous Fees		
143500	Interest		
322380	Recoveries of Court Costs		
322386	Restitution to U.S. Government		
121000	Conscience Fund		
129900	Gifts		
504100	Crime Victims Fund		
613300	Unclaimed Monies		
510000	Civil Filing Fee (½)		
510100	Registry Fee		

Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE 19	Cash	Check	M.O.	Credit

DEPUTY CLERK: MKC

United States Court of Appeals
For the Second Circuit

96-9011

Gordon V NYC BD of ED

Notice of Motion
Request for
Reconsideration to
Stirke Document from
the Record

UNITED STATES COURT OF APPEALS
FILED FEBRUARY 10, 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

Elizabeth Gordon, Pro Se
159 26 Harlem River Drive, Apt. 10H
New York, New York 10039
(212) 491-6392

Has consent of opposing counsel been obtained: No
Has service been effected: Yes
Is oral argument desired: Yes
Has argument date of appeal been set: No
By firm date of argument noticed? No

Judge or agency whose order is being appealed:
The Honorable Sidney H. Stein

Opposing Counsel:
Joseph I. Lauer
Cooperation Counsel's Office
City of New York
100 Church Street. Room 6-198
New York, New York 10007 788-0861

I am requesting additional letters to my attorney as well as parts of my diaries as supplemental exhibits

"s/Elizabeth Gordon" 02/08/97

IT IS HEREBY ORDERED that the motion be and it hereby is denied

UNITED STATES COURT OF APPEALS
FILED FEBRUARY 11, 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

Previous requests for similar relief and disposition:
NONE

Statement of the issue(s) presented by this motion:
The text of a letter written by me dated April 22, 1935, and submitted by the Defendant as "Defendant Exhibit HI" appears to have been re-written.

On November 21, 1996, I received a copy of the letter from my personnel file, per my requests November 4 and 8, 1996 Acknowledgments 11/14;21/96.

On December 11, 1996, I compared the two copies to my original copy and discovered the differences, after requesting and receiving a copy of my complete personnel file from the Principal, Mrs. Fay Pallen, 11/21/96.
Brief statement of the facts (with page references to the moving papers): My original letter to the Principal dated April 22, 1985 was numbered Page 1 of 10. The Defendant Exhibit M and a copy of the letter which I received from the current Principal are numbered Page 1 of 9. Page 5 of 10 (Page 5 of 9): The entire text appears to have been re-written. Page 9 of 10 (Page 9 of 9): The entire text appears to have been re-written in part, and simply omitted altogether. Page 10 of 10 was completely omitted.

A person or persons unknown to me apparently altered the original text of my letter dated April 22, 1985 without my consent or knowledge in a deceitful manner.

The letter was re-written by a person or persons after ~ submitted it to the Principal in 1985.
Summary of the argument (with page references to the moving papers): The Defendant has made reference to Exhibit M in connection with my ratings in 1994-1995; 1995-1996. The entire text of my April 22, 1985 Rebuttal was not admitted into evidence; because of re-written text as well as what appeared to be omitted text.

1. The entire text on page 5 of 10 appears to have been re-written.

2. The entire text on page 9 of 10 appears to have been re-written in part and simply omitted altogether.

3. The entire text on page 10 of 10 was omitted.

A person or persons unknown to me apparently in a deceitful manner altered the original text of my letter dated April 22, 1985 without my consent or knowledge.

On November 4, 1996, I requested a copy of my entire personnel file from the Principal of I.S. 70, firs. Fay Fallen. On November 21, 1996, I received copies of my "teacher files for the academic years up to and including 19921993" from the Principal, firs. Fay Pallen. On December 11, 1996, I examined the contents of the packet and discovered that documents were omitted. After closely comparing a copy of a letter that was presented to the Court by the Defendant as "defendant Exhibit id" to a copy of the letter that I made in 1985; it did not appear to be in the same condition as it was at the time I submitted it to the Principal.

United States Court of Appeals
For the Second Circuit

96-9011

Gordon V NYC BD of ED

Notice of Motion
for leave to file
supplemental exhibits.

Elizabeth Gordon, Pro Se
159 26 Harlem River Drive, Apt. 10H
New York, New York 10039
(212) 491-6392

Has argument date of appeal been set:
Yes
Week of December 2, 1996

Judge or agency whose order is being appealed:
The Honorable Sidney H. Stein

Opposing Counsel:
Todd Andrew Bromberg, Esq.
Cooperation Counsel's Office
City of New York
100 Church Street
New York, New York 10007 788-0861

I am requesting additional letters to my attorney as well as parts of my diaries as supplemental exhibits

"s/Elizabeth Gordon"

10/11/96

IT IS HEREBY ORDERED that the motion be and it hereby is granted

UNITED STATES COURT OF APPEALS
FILED FEBRUARY 4, 1997
GEORGE LANGE III, CLERK
SECOND CIRCUIT

Previous requests for similar relief and disposition:

NONE

Statement of the issue(s) presented by this motion:

1. The letters were written to my attorney between Dec. 1994, and Jan. 1996.
2. The letters apprised my attorney of the harassment against me during the course of my employment by the principal, Fay Pallen and other administrators.
3. The letters were explicit regarding my attorney informing the Court before a decision was made in my case.
4. The diaries are a compilation of events and incidents that occurred over the years from approximately 1986 to 1996.
5. The diaries are essential and will further refute the "Hearsay" testimony.

Brief statement of the facts (with page references to the moving papers):

Diary # 1 - 3/13/90 badgered by Mr. Ma He stated, "Do you really feel deep down in your heart that you were discriminated against?" He interjected my resigning after "one month" from the testing coordinators position. p. 2. State my "colleagues did not select me to the Edu. Dir. Position" because they didn't see me as competent." "My colleagues, the UFT chair did not think that I had a case. "He accused me of making negative statement. The Director stated (p.36) the letter was from fir. Ida because of "your lawsuit." 4/23/90. Diary # 2. 9/5/86 I accompanied the Principal, Mr. Witty to a D.O. Principal's cont. He asked me to look around and tell him what I saw. He stated, "There are no minorities." 10/15/86 accompanied Mr. Witty to P.S. llM. He introduced me to the AP parent body, "Liz is a young lady who has taken the A.P. exam and became an AP. One day she may be appointed in the District and perhaps even I.S. 70." After the meeting, he asked me if I liked the way he introduced me . Diaries # 3&4.

Summary of the argument (with page references to the moving papers):

The Defendant has stated that "administrators" along with "parents" and "faculty" spoke very negatively about me. The statements are false and the admission of my diaries will refute what was said about me by Anthony Alvarado and the others. The diaries will substantiate that no administrators spoke to Mr. Alvarado about me. The letters will substantiate that I was being harassed by the principal, Fay Pallen and other administrators. They are important; because the truth will come out. They are important because they will attack the credibility of Mr.

Alvarado, I;rs. Ramirez-Epstein, William Ma, and Fay Pallen. Each of the four witnesses misrepresented the facts in this case. The diaries will indicate that I did not have a problem with administrators, nor that any administrators spoke negatively about me during the summer of 1987. They will illustrate just how extensively the Defendant has conspired against me. They substantiate how the witnesses misrepresented the facts, it appeared intentional and deliberate, while under oath.

United States Court of Appeals
FOR THE SECOND CIRCUIT

ELIZABETH GORDON,

Plaintiff,

-against-

AFFIDAVIT / AFFIRMATION
90-9011

THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK,

Defendant,

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Elizabeth Gordon, makes the following affirmation under the penalties of perjury:

I, Elizabeth Gordon , am plaintiff in the above entitled action, and respectfully move this Court to issue an order to admit letters from me to ma Attorney and Parts of my diaries as supplemental exhibits.

The reason why I am entitled to the relief I seek is the followings The defendant has stated that "administrators" along with "parents" and "faculty" spoke very negatively about me. The statements are false and the admission of my diaries will refute what was said about me by Anthony Alvarado and the others. The diaries will substantiate that Mr.: Alvarado did not have any decisions~ about me during the summer of 1987. The letters will substantiate that I was being harassed by the principal. Fad Fallen and other administrators. The letters and my diaries are important; because the truth will come out. They are important because they will attack the credibility of Mr. Alvarado, Mrs. Ramirez-Epstein. William Ma. and Fay Pallen. Each of the four witnesses misrepresented the facts in this case. The diaries will indicate that I did not have a problem with administrators, nor that and administrators

spoke negatively about me during the summer of 1987. They will illustrate just how extensively the
Defendant has conspired against me. She will substantiate how the witnesses misrepresented the facts, it appeared intentional and deliberate, while under oath.

WHEREFORE, ~ respectfully request that the court grant the within motion, as well as such other and further relief and may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 1996
October 29, 1996

"s/Elizabeth Gordon"
ELIZABETH GORDON

United States Court of Appeals
FOR THE SECOND CIRCUIT

ELIZABETH GORDON,

Plaintiff,

Petition For Suggestion
For Rehearing
96- 9011

-against-

THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK,

Defendant,

1. A Suggestion for Rehearing In Banc is being requested Pursuant to Rule 35 (b) of the Federal Rules of Appellate Procedure of the United States Court of Appeals For The Second Circuit. The appropriateness of a rehearing in bane is set forth below I was discriminated against based on protective clause status and retaliated against because I objected to the discrimination by filing a complaint Pursuant to 42 U.S.C. § 2000e - 5 ("Title VII") and 42 U.S.C. § 1981.
2. My counsel was ineffective, and as such, he did not have my best interest at heart. As a result, the defendant was allowed to give unsubstantiated "Hearsay" testimony/evidence against me without objection from my attorney. This was unconscionable as well as an irregularity. The defendant was given a free reign with the unsubstantiated "Hearsay" and I was told not to rebut the testimony by my attorney; because "It does not mean anything, and the Judge will not be influence by it." That was far from the truth.
3. There is an element of unfairness Which I am very concerned about. I brought the "Hearsay" testimony/evidence to the attention of both Courts via a Motion for Reconsideration as well as my appeal. However, to no avail. I am most concerned that the evidence which I presented to the Courts via my Motion for Reconsideration and my appeal contradicts everything Or. Anthony Alvarado, Beatrice Ramirez-Epetein, William Ma, and Mrs. Fay Pallen said' but the Courts ruled in their Favor against me. Justice was certainly not served.
4. There were many irregularities that went unchecked during my two day bench trial. Examples Hearsay evidence against me that went

unchecked by my attorney, judicial error, ineffective counsel, falsification/tampering with evidence, perjury, admission of evidence without any documented proof, admission of evidence by a coconspirator against me, named in a harassment Complaint before the New York City Commission On Human Rights, a constitutional violation (the 14th Amendment to the Constitution of the United States). These irregularities were upheld by both Courts. It is wrong; because the Courts are supposed to be void of politics. I did not receive justice; nor the equal protection under the laws.

5. The Courts would have one believe that I did not Reestablish by a preponderance of the evidence that I was discriminated against; because of my race (black) and color (black), and retaliated against because I objected to being discriminated against by filing a complaint, that is simply not true. I was and still am the victim of racism; but now it appears as if I am the victim of politics. In spite of the Pact that my evidence, including the motion which was granted, substantiated perjury, conspiracy to commit fraud, harassment and other wrongdoings by the defendant, the Courts ruled against me.

6. I did not merely attempt to "establish pretext by relying on" my "personal belief that" I "was the most qualified person for the position." I submitted credible evidence to substantiate my claim that I was more qualified than some of the selectees and equally qualified as others; but discrimination based on protective class statue was the real reason for denying me the position of educational director. If protective clause status was not the real reason the defendant discriminated against me, and subsequently retaliated against me; because I objected and filed a complaint. Why, then, wan it necessary for the defendant to engage in a campaign of harassment against me? Why, then, was it necessary for the defendant to conspire against me in an effort to hinder this case and to destroy my career as an educator?

7. The Judge erred by not allowing my attorney the opportunity to question Mr. Anthony Alvarado about why he resigned as Chancellor from the New York City Board of Education per an article that was printed in New York Newsday, April 21, 1989. Mr. Alvarado was the person responsibility for making the decision as to who would be hired. My attorney did not have the opportunity to attack Mr. Alvarado's creditability, who also had an interest in the outcome of the case. I am only asking for Justice relative to this case.

Dated: March 28, 1997
New York, New York

"s/Elizabeth Gordon"

To: Joseph I. Lauer
Corporation Counsel's Office
City of New York
100 Church Street, Room 6-198
New York, New York 10007

United States Court of Appeals
FOR THF SECOND CIRCUIT

ELIZABETH GORDON,

Plaintiff,

AFFIDAVIT / AFFIRMATION
96 - 9011

against-

THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK,

Defendant,

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

Elizabeth Gordon, makes the following affirmation under the penalties of perjury:

I, Elizabeth Gordon, am plaintiff in the above entitled action, and respectfully petition this Court to issue an order granting my suggestion for rehearing in banc Pursuant to Rule 35 (b) of the Federal Rules of Appellate Procedure of the United States Court of Appeals For The Second Circuit.

The reason why I am entitled to the relief I seek is the following: The defendant has stated that "administrators" along with "parents" and "faculty" spoke very negatively about me. The statements are false and the admission of diaries have refuted what was said about me by Anthony Alvarado, Fay Pollen, William Ma and Mrs. Ramirez-Epstein. My diaries and letters to my attorney substantiated that the defendant committed perjury under oath during my two day bench trial. The letters substantiated that I was being harassed by the Principal Mrs. Fay Pallen.

I did not have effective counsel because my attorney did not challenge the unsubstantiated "Hearsay" nor did he object or challenge the evidence that was submitted against me. My rights were not Protected under the laws: they were violated. The defendant tampered with

official school records. The defendant even submitted documents that were not part of my official school file. The Principal made a disparaging remark about me. My attorney
would not allow me to rebut the remark.

Questions relative to my administrative experience within the school were not answered effectively as a result of ineffective counsel. The defendant conspired against me. Facts were misrepresented.

WHEREFORE, I respectfully request that the court grant the within petition, as well as such other and further relief and may be just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 28, 1997

"s/Elizabeth Gordon"

SDNY
Stein, DJ
93-cv-6660

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United State Courthouse, Foley Square, in the City of New York, on the 18 day of March , one thousand nine hundred and ninety-seven.

PRESENT:
Hon. John M. Walker, Jr.,
Hon. Joseph N. McLaughlin,

Circuit Judges.

Hon. Denny Chin,

District Judge.

ELIZABETH GORDON,

Plaintiff-Appellant,

v.

No. 96-9011

BOARD OF EDUCATION FOR THE
CITY OF NEW YORK,

Defendant-Appellee.

**APPEARING FOR APPELLANT: ELIZABETH GORDON, PRO SE
NEW YORK, NEW YORK**

The Honorable Denny Chin of the United States District Court for the Southern District of New York, sitting by designation. -

**APPEARING FOR APPELLEE: JOSEPH I. LAUER, ESQ.
ASSISTANT CORPORATION COUNSEL,
NEW YORK, NEW YORK**

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York (Stein, J.), and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is AFFIRMED.

Plaintiff-appellant Elizabeth Gordon, who is proceeding pro se, appeals from a judgment of the district court entered on July 10, 1996 following a two day bench trial, dismissing her employment discrimination complaint, which was brought pursuant to 42 U.S.C. § 2000e-5 ("Title VII") and 42 U.S.C. § 1981. For the reasons stated in the district court's opinion, dated July 8, 1996, we agree that plaintiff has not established by a preponderance of the evidence that, by failing to appoint plaintiff to the position of Educational Director, defendant either discriminated against plaintiff on the basis of her race or retaliated against her on the basis of her claims of race discrimination. See Molt v. KMI Continental, 95 F.3d 123, 130 (2d Cir. 1996) (Title VII plaintiff cannot establish pretext by relying on her personal belief that she was the most qualified person for the position). We thus conclude that the district court's finding that plaintiff failed to prove discrimination was not clearly erroneous. See Fed. R. Civ. P. 52(a). We also find no merit to any of Gordon's claims of evidentiary error.

Accordingly, we affirm the judgment of the district court.

"s/Hon. John M. Walker, Jr."
Hon. John M. Walker, Jr.,

"s/Hon. Joseph N. McLaughlin"
Hon. Joseph N. McLaughlin,

"s/Hon. Denny Chin"
Hon. Denny Chin,

Fulton County School System
736 Cleveland Ave., S.W.
Atlanta, Georgia, 30315

Dear Dr. Lavender:

I have been the Special Education Supervisor of Ms. E. Gordon from November 1984 to the present. During that time I have had the opportunity to observe not only Ms. Gordon's academic abilities but also her interpersonal relationships with staff, students and administration.

As far as academic abilities, Ms. Gordon's are of the highest caliber. She has worked well with mildly to moderately learning disabled children from grades 6 thru 9. Ms. Gordon has been able to assess a students disability and plan a program to help remedied these disabilities. Many of her students have achieved success in school because of Ms. Gordon's assistance.

When it comes to interpersonal relationships, Ms. Gordon has always gone above and beyond the call of duty. Reports, forms and various administrative items were always in before the due date and were completed with care and accuracy. Ms. Gordon gets along well with her co-workers and also with the administration. She has volunteered to be on committees and has always done an admirable job.

It is for the above reasons that I give Ms. Gordon the highest recommendation,

Sincerely Yours,

"s/Barbara A. Gambino"
Barbara A. Gambino
Supervisor,
Special Education

ANTHONY J. ALVARADO

Superintendent

COMMUNITY SCHOOL
DISTRICT TWO
330 WEST 18th STREET
NEW YORK, N.Y. 10011
TELEPHONE (212) 337-8700
WRITER'S DIRECT # (212) 337-

May 27, 1993

Ms. Gordon;
SIS I Teacher
I.S.70M

Dear Ms. Gordon:
On my many informal visits to your classroom during this school year, I have observed your commitment to the education of the children in your charge. Your many projects with your students have been met with success and a sense of achievement that our children so sorely used.

As the school year draws to a close let me wish you a wonderful and restful summer vacation.

Sincerely,

"s/Elise Bielicki"
Special Education Supervisor

I have read this letter and understand that it will be placed in my file.

"s/Elisabeth Gordon"
Teacher 's Signature

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

Complaint No:
M-E-0-96-1000880-E

In the Matter of the Complaint of

ELIZABETH GORDON,

Complainant,

- against -

Verified Complaint
Federal Charge No.
16F960267

THE NEW YORK CITY BOARD OF EDUCATION, INTERMEDIATE SCHOOL 70, ANTHONY ALVARADO, ELAINE FINK, PAMELA MAURICE, CAROLE VINCE, DELLA SUAREZ, FAY PALLEN,

Respondents

Elizabeth Gordon, complaining of respondent(s), alleges as follows:

1. Complainant Elizabeth Gordon opposed discriminatory practices forbidden by the Administrative Code of the City of New York by filing a complaint with the City Commission on Human Rights on March 28, 1988 (EMO 1755-03/07/88-DE and Federal Charge No. 16F88-0858), charging respondent New York City Board of Education and Intermediate School 70 with discrimination based on her race and color. Her address is 159-26 Harlem River Drive, #10, New York, N.Y. 10039.

2. Respondent New York City Board of Education (hereinafter "Board of Education") is an employer as defined by Section 8-102 of the Administrative Code of the City of New York. Its address is 110 Livingston Street, Brooklyn, N.Y. 11201.

3. Respondent Intermediate School 70 (hereinafter "I.S. 70") has an educational affiliation, and is owned and operated by respondent Board of Education, and its address is 333 West 17th Street, New York, NY 10011.

4. Respondent Anthony Alvarado ("Alvarado") is employed by

respondent Board of Education as Superintendent. His address is Community School District Two, 333 Seventh Avenue, New York, N.Y. 10001.

5. Respondent Elaine Fink ("Fink") is employed by respondent Board of Education as Deputy Superintendent. Her address is Community School District Two, 333 Seventh Avenue, New York, N.Y. 10001

6. Respondent Pamela Maurice ("Maurice") is employed by respondent Board of Education as District Administrator of Special Education. Her address is 330 West 18th Street, New York, N.Y. 10011.

7. Respondent Carole Vince ("Vince") is employed by respondent Board of Education as Special Education Supervisor. Her address is c/a I.S. 70, 330 West 17th Street, New York, N.Y. 10011.

8. Respondent Della Suarez ("Suarez") is employed by respondent Board of Education as Special Education Supervisor. Her address is c/a I.S. 70, 330 West 17th Street, New York, NY 10011.

9. Respondent Fay Pallen ("Pollen") is employed but respondent Board of Education as Principal of respondent I.S. 70. Her address is c/a I.S. 70, 330 West 17th Street, New York, NY 10011.

10. On or around 1977, complainant was appointed as public school teacher by respondent Board of Education. Since 1987, complainant has been working as a special education teacher for respondent I.S. 70.

11. During the length of complainant's employment with respondent Board of Education she has had an excellent performance and attendance record.

12. Upon information and belief, on or about September 1993, respondent Board of Education was served a copy of a summons and complaint of Civil Action (93 CIV.6660) commenced against it by complainant as a direct result of the aforesaid discrimination complaint.

13. Beginning in or around 1993 and continuing to date, respondents have subjected complainant to unequal treatment, including but not limited to, being overly critical of complainant's work, scrutinizing and questioning complainant's teaching ability, methods and application,

repeatedly observing complainant's classroom at will and without any previous notification, creating a biased, hostile work environment which has caused other co-workers to behave in a negative manner towards complainant.

14. Beginning in or around 1994 and continuing to date, respondents Fink, Maurice, Vince, Suarez and Puller have on numerous occasions observed complainant's classroom and have arbitrarily rated her work performance as unsatisfactory.

15. Upon information and belief, respondents have taken these actions in response to and in retaliation for complainant's aforesaid complaint.

16. Beginning in or around 1994 and continuing to the present, complainant has repeatedly notified respondent Alvarado of respondents' unequal treatment. However, respondent Alvarado has failed to take any corrective measures.

17. Complainant charges that respondents have discriminated against her by denying her equal terms and conditions of

employment in retaliation for her opposition to discriminatory practices in violation of Section 8-107.7 of the Administrative Code of the City of New York.

18. Complainant also charges that the respondents have violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., in retaliation and hereby authorizes the New York City Commission An Human Rights to accept this verified complaint on behalf of the Equal Employment Opportunity Commission, subject to the statutory limitations contained in Title VII.

CITY OF NEW YORK

Elizabeth Gordon, being duly sworn, deposes and says: that I am the complainant herein; I have read (or had read to me) the foregoing complaint and know the content thereof; that the same is true of my own knowledge except as to the matters therein stated on information and belief; and that as to those matters, I believe the same to be true.

Subscribed and Sworn to before me
this 27th of March, 1996

"s/Wallace Sanders"
(Sigmature of Notary Public)

Wallace Sanders
Commissioner of Deeds
City of New York No. 1-5852
Certificate Filed in New York County
Commission Expires May 1, 1996

"s/Elizabeth Gordon"
(Sigmature of Complainant)

DA Investigating New Allegations Against Alvarado

By Nina Bernstein

The Manhattan district attorney's office is investigating allegations of wrongdoing in Community School District 2 that center on personnel decisions by Anthony Alvarado, its superintendent, sources say.

Financial improprieties that forced Alvarado to resign in disgrace from the city's schools chancellorship five years ago have come back to haunt him in this new investigation, according to sources close to the probe.

Under scrutiny, they said, are Alvarado's decisions either to hire or champion former associates who either lent him money in the past, were linked to a slush fund in District 4, or who are part of an alleged job-swapping network with other districts now under investigation.

Alvarado, a charismatic and innovative educator, resigned the chancellorship in 1984 when it was disclosed that as superintendent of Community School District 4, he had solicited thousands of dollars in unpaid loans from subordinates, several of whom received promotions or extra wages after lending Alvarado money. Alvarado was not charged with a crime and has since repaid the loans.

Among the employees Alvarado has hired since taking over District 2 in 1987 is Dori Collazo-Baker, who had lent him $5,000 during his District 4 days, and whose husband, Terry Baker, lent him $4,000. Alvarado appointed her head of the task force redesigning JHS 17, which was shut down last year.

AP Photo

Anthony Alvarado

Another former District 4 associate, Dorothy Bowser, was granted tenure as a principal in District 2 last month. Bowser helped establish and run a slush fund in District 4 in East Harlem, signing blank checks drawn on the fund, according to her own testimony recounted in a report on a two-year investigation released last winter by the Board of Education's inspector general.

The District 4 slush fund, still under investigation by the Manhattan District Attorney used education money

Please see ALVARADO on Page 28

Alvarado Allegations

ALVARADO from Page 6

for loans to favored employes, political contributions, food and liquor and personal expenses such as a sweet-16 party for the daughter of one official, according to the report. The report led earlier this year to the suspension of Carlos Medina, Alvarado's successor as District 4 superintendent.

Alvarado could not be reached for comment, but earlier this year a spokesman, Anthony Lachman, defended the hiring of Collazo-Baker and others with District 4 connections by saying, "These people are qualified for positions and were approved by a board. The person's experience and qualifications for the position were the overriding consideration in all of the hirings."

The district attorney's office also has interviewed Lisa Knox, a parent at PS 127 on Roosevelt Island who was ousted from the parent association's executive board after she demanded an accounting of federal school funds and corporate donations to the school, where Bowser is principal. The Board of Education ordered Knox reinstated, but she said her questions about school funds have not been answered.

Alvarado, who wrote a much-praised report on school board corruption and patronage for Manhattan Borough President David Dinkins, is also under fire from parents at a Chinatown school who say he is paying a political debt by imposing as principal a candidate rejected by the parent search committee.

"It's disgusting. They are using this as a political stepping stone," said Ann Hsiung, a lawyer and parent who helped the PS 124 Parents Association go to court four years ago when the previous superintendent, Gladys Hanon, tried to force the screening committee to recommend Judith Chin as principal. The court agreed with the parents that Chin